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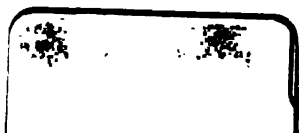
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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1882.

CASES RELATING TO
THE POOR LAW, THE CRIMINAL LAW
AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

The Duties and Office of Magistrates

DECIDED IN THE
QUEEN'S BENCH DIVISION

AND IN THE
COURT FOR CROWN CASES RESERVED,
MICHAELMAS 1881 TO MICHAELMAS 1882.

REPORTED

In the Court for Crown Cases Reserved,
By WALTER HENRY MACNAMARA,
BARRISTER-AT-LAW.



In the Queen's Bench Division,
W. DECIMUS I. FOULKES, J. H. ETHERINGTON SMITH,
GILBERT GEORGE KENNEDY, RICHARD HOLMDEN AMPHLETT,
FRANCIS PARKER AND EDWARD BENNETT CALVERT,
BARRISTERS-AT-LAW.

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SUPREME COURT OF JUDICATURE.

CASES RELATING TO THE POOR LAW, THE CRIMINAL LAW, AND OTHER SUBJECTS

CHIEFLY CONNECTED WITH

The Duties and Office of Magistrates.

LAW JOURNAL REPORTS, VOL. LI.

MICHAELMAS, 1881, to MICHAELMAS, 1882.

45 *Victoria*.

[IN THE COURT OF APPEAL]

1881. } THE MAYOR, &C., OF ROCHDALE v.
Nov. 15. } THE JUSTICES OF LANCASHIRE.*

Highway—Liability to Repair—Main Road—Portion of a Road ceasing to be a Turnpike Road—41 & 42 Vict. c. 77. s. 13.

The Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), enacts, by section 13, that any road which has since 1870 ceased to be a turnpike road shall be deemed a main road, and that half the expenses of maintaining such a road shall, after the 29th of September, 1878, be borne by the county authority. Certain roads, formerly turnpike roads, ceased after 1870 to be such, through the enlargement of the area of the borough of R., by which portions of such roads were taken out of the turnpike trust and included within the borough. By 10 & 11 Vict. c. 34 the corporation, as the highway authority of the borough, became liable for the repair of all highways within the borough, and the turnpike trustees were precluded from levying tolls or spending money on any road within the borough.

The corporation claimed to recover from the county authority half of the expenses

of maintaining such portions of the roads as had become included in the enlarged area of the borough:—

Held (reversing the judgment of the Queen's Bench Division), that the claim must be allowed, inasmuch as those portions of the roads which were so included had ceased to be turnpike roads, and had become main roads, and that the provisions of section 13 of 41 & 42 Vict. c. 77 consequently applied to them.

Appeal from the judgment of the Queen's Bench Division on a Special Case.

The case is reported 50 Law J. Rep. M.C. 97.

The question raised by the Special Case was whether the plaintiffs, the Rochdale highway authority, were entitled under section 13 of 41 & 42 Vict. c. 77 (1) to

(1) 41 & 42 Vict. c. 77. s. 13: "For the purposes of this Act, and subject to its provisions, any road which has within the period between the 31st day of December, 1870, and the date of the passing of this Act ceased to be a turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road, and one-half of the expenses incurred from and after the 29th day of September, 1878, by the highway authority in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area, be paid to the highway authority

* *Coram* Lord Coleridge, C.J.; Brett, L.J.; and Cotton, L.J.

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call upon the defendants, the Lancashire county authority, to contribute half of the expense of maintaining certain roads within the area of the Rochdale highway authority.

Rochdale was incorporated in 1856, when the borough included all places "within a radius of three-quarters of a mile from the old market-place," and all the powers and rights of the local commissioners who had, prior to the incorporation, governed the town of Rochdale, were then transferred to the corporation. By the Rochdale Improvement Act, 1853, sections 47, 48, 49, 50 of the Towns Improvements Clauses Act, 1847 (10 & 11 Vict. c. 34), were, *inter alia*, incorporated therewith.

Section 47 gave the management of all public highways to the commissioners.

Section 48 was as follows: "The commissioners and none other shall be the surveyors of all highways within the limits of the special Act, and within those limits shall have all such powers and authorities, and be subject to all such liabilities as any surveyors of highways are invested with or subject to by virtue of the laws for the time being in force, and the inhabitants of the district within the said limits shall not in respect of any lands situate within the said district be liable to the payment of any highway rate, grand jury cess or other payment in respect of making and repairing roads within the other parts of the parish township, barony or place in which the said district or any part thereof is situate."

of such area by the county authority of the county in which such road is situate out of the county rate on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction: Provided that no part of such expenses shall be included in—1. Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereafter made; or, 2. Any order made on the council of any borough having a separate Court of quarter sessions under section 117 of the Municipal Corporation Act, 1835. The term 'expenses' in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed or of interest payable thereon."

Section 49: "The commissioners shall be deemed guilty of a misdemeanour for refusing or neglecting to repair any public highway within the limits of the special Act, and shall be liable to be indicted for such misdemeanour in the same manner as the inhabitants thereof, or of any parish, township or other district therein, were liable before the passing of the special Act."

Section 50: "The trustees of any turnpike road shall not collect any toll on any road within the limits of the special Act or lay out any money thereon."

In 1872 the Rochdale Improvement Act was passed, by which the boundaries of the borough were considerably enlarged, and by which all the provisions of the Acts relating to the old borough were extended and made applicable to the enlarged area of the borough. The effect of this was that portions of certain turnpike roads entering Rochdale were brought within the area of the borough, and being thus taken out of the turnpike trusts they ceased to be turnpike roads, and the corporation, as the highway authority, became liable to maintain them.

The plaintiffs claimed from the county by virtue of section 13 of 41 & 42 Vict. c. 77 (1) half of the expenses of maintaining the portions of the roads so included in the enlarged borough. A Special Case was stated by consent, on the argument of which in the Queen's Bench Division judgment was given for the county authority, the defendants.

The plaintiffs appealed.

Sir H. Giffard (with him *Crump*), for the appellants.—The question turns on the true construction of section 13 of the Highways Act of 1878 (1); and it is submitted that any road within the enlarged area of the borough—which has ceased since 1872, by the operation of the Improvement Act, 1847, to be repaired by the turnpike trustees, is now a main road within the meaning of section 13 of the Act of 1878 (1); and that, therefore, the plaintiffs are in the case of any such road entitled to claim from the county authority half of the expenses of repair. For this purpose any part of any road must be considered as coming within the descrip-

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tion "any road." The object of the Act of 1878 was to reduce to a system the cost of repairing highways. Section 15, in furtherance of that object, provides for the declaring highways to be main roads; and section 16, on the other hand, gives power to prevent roads from being declared main roads.

Gorst (with him *Blair*), for the respondents.—The portions of roads taken out of the turnpike trusts have not ceased to be turnpike roads. It is true that by section 50 of the Improvement Act no tolls are to be collected on those portions of a road, but there is no provision that tolls may not be collected in respect of such portions of road; and the provision may well merely be one of convenience as to the placing of toll gates. Certain parts may have been taken out, but the whole road still remains a turnpike road, and the intention of the Legislature was that a road should only cease to be a turnpike road by the effluxion of the trust; and the dealing with a part of a road only does not disturb it, so that the condition specified in section 13 of the Act (1) does not exist, and the defendants cannot be liable.

LORD COLERIDGE, C.J.—I am unable to agree with the judgment of the Divisional Court in this case. I think that the true construction of section 13 of the Highways and Locomotives Act, 1878 (1), is that any portion of a turnpike road as well as the whole of a turnpike road, which has, within the time mentioned in the Act, ceased to be a turnpike road, shall be deemed to be a main road. It is difficult, indeed, to say what is the whole of any road. A road runs from London to York, and such a road is subject to several turnpike trusts, each of which covers only a part of that road. In such a case it seems to me that when any part of a road subject to a turnpike trust is brought within the area of the borough, and becomes repairable by the highway authority of the borough, and when the power to take toll has ceased, then so much of that road as was subject to a turnpike trust ceases to be a turnpike road, and comes under the provisions of section 13 of the Act of 1878 (1). I

therefore think that this judgment must be reversed.

BRETT, L.J.—I think that a turnpike road is, in a case such as the present, made shorter by the extension of the borough. That portion of the road which is outside the borough is still a turnpike road, while that which is inside the borough is no longer a turnpike road, but has become a main road, and falls under the provisions of section 13 of 41 & 42 Vict. c. 77 (1). I agree therefore that this judgment must be reversed; and I would add that this decision makes the other point suggested immaterial; that is to say, it is unnecessary to decide whether, supposing the provisions of this section to apply to a turnpike road of which the trust has not expired, they would still apply when the trust has expired.

COTTON, L.J.—I agree that this judgment must be reversed. I think we ought to consider the object of the statute. That object was that, when a road which was formerly repaired by a turnpike trust became repairable by a local highway authority, the county should bear part of the expense. Why should not this apply to the present case? It is urged it should not so apply because the portion of the road included was not a turnpike road but only part of a turnpike road. I, however, am of opinion that it was a turnpike road; that it has ceased to be such a road; and that it has come under the provisions of section 13 of the Act of 1878 (1). A road from London to York or Dover may be, as has been said, a turnpike road all along its whole length. Could it, however, be said that the provisions of the Act would only apply to the whole length of that turnpike road? It was then said that a road could only cease to be a turnpike road by the expiration of the trust. There is, however, nothing in the section which thus limits its operation. Another point taken was that there was a provision in the Act that the expenses of repair should be provided out of a certain fund. Now, if the Act had said that such expenses were to be provided out of a certain fund and not in any other way, I think this argument

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would have some force; but there is nothing in the statute to that effect. The Towns Improvement Clauses Act, 1847, provides that the commissioners shall repair the roads just as any other body which was liable to repair it before. They are not directed to pay the expenses out of a particular fund, and not out of any other. It is plain that the commissioners have only the same duty and liability that any other body of persons liable to repair have; and they are, in my opinion, entitled to call on the county to contribute to the expenses thus incurred.

Appeal allowed.

Solicitors—J. J. & C. J. Allen, for Z. Mellor, Rochdale, for plaintiffs; Ridsdale & Son, for Wilson & Hulton, Preston, for defendants.

1881. }
Nov. 16. } TEMPLEMAN (appellant) v.
TRAFFORD (respondent).

Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 17—Sale of Poisons—Name and Address of Seller.

By section 17 of the Pharmacy Act, 1868, it is made "unlawful to sell any poison unless the box, bottle, vessel, wrapper or cover in which such poison is contained be distinctly labelled with the name of the article and the word poison, and with the name and address of the seller of the poison."

The respondent kept a shop and sold there upon commission a poison, which was labelled with the name and address of the person, a duly qualified chemist, who supplied it to him, but not with his own name or address. The chemist who supplied him lived elsewhere, and had nothing to do with the sales in respondent's shop, beyond afterwards receiving the money realised, less the commission. On an information against the respondent under section 17,—

Held, that he, having the control of the

business of sale, was the seller, and must be convicted for not having his name and address on the label.

This was a Case stated by Justices of the city of Oxford on dismissing an information preferred by the appellant, assistant secretary to the Chemists' and Druggists' Trade Association of Great Britain, against the respondent, charging that on the 15th of June, 1881, he did sell a certain poison, to wit, red oxide of mercury, commonly called red precipitate, the same not being in a box, wrapper, &c., distinctly labelled with the name and address of the seller, contrary to the Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 17.

It was proved that the appellant on the 15th of June, 1881, entered the shop, 100 Friar Street, Oxford, over which shop no name was painted up, and asked a woman who was behind the counter for a pennyworth of red precipitate, and was supplied by her with a packet of the same, for which the appellant paid the said woman. The packet was not labelled with the name and address of the respondent, but was labelled in print thus: "W. Paterson, Chemist and Druggist, 3 Cowley Road, Oxford."

It was admitted by the respondent that the appellant had been served with the red oxide of mercury at the shop situate 100 Friar Street, of which the respondent was the occupier, and in respect of which the respondent alone was rated. It was also admitted that red oxide of mercury was an article duly declared to be a poison within the meaning of the Pharmacy Act. It was contended by the respondent that W. Paterson was a tenant of the respondent in respect of the use of one of the windows and part of the respondent's shop, and that the respondent acted as a servant to the said W. Paterson in the sale of such red precipitate, and in support of such contention he called W. Paterson, who deposed that he paid respondent 4s. a week for the partial use of one of the windows and of part of the shop; that he considered the respondent, if anything, was a servant of his, and that he employed him to sell goods for him;

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that he paid no salary, but allowed him a commission of ten per cent. on the sales; that he was accustomed to send different articles to respondent to be sold, but that he did not sell them to the respondent, nor did he ever invoice them to him, but that he kept an account against the respondent, and if any of the goods were destroyed he should want the respondent to pay him for them. He considered the packet in question sold to the appellant was his property, and not the respondent's. It was contended on behalf of the appellant that the packet was not properly labelled: that the respondent was not a servant of the said W. Paterson within the meaning of the 17th section, but was the seller of the poison, and ought to have had his own name and address distinctly labelled upon the said packet as provided by the said section.

The questions for the opinion of the Court were, first, Were the Justices right in drawing the conclusion from the evidence that the respondent was servant of the said W. Paterson within the meaning of the said 17th section; second, If the respondent was not the servant of the said W. Paterson, but was his agent, does such agency carry with it such a contract of service as to bring the respondent within the 17th section or does it not? Or in one question and in other words, Was the packet in the opinion of the Court sufficiently or properly labelled within the meaning of the said 17th section of the Pharmacy Act, 1868?

C. Higgins, for the appellant. The points here raised for decision are of great public importance. They are these. Can a trader sell to the public poisons supplied to him by a duly qualified chemist and druggist under cover of a label bearing the name of the chemist and druggist and not that of the actual seller? Secondly, Can a trader sell such poison under a label bearing the address of the chemist and druggist, and not that of the place of sale? The 17th section of the Pharmacy Act, 1868, dealt entirely with the actual selling of poisons, and the regulations are for the public protection. It enacts that "it shall be unlawful to sell any poison unless

the box . . . be distinctly labelled with the name of the article and the word poison, and with the name and address of the seller of the poison." The meaning it is submitted of "seller" is the person who actually sells. In *The Pharmaceutical Society v. The London and Provincial Supply Association* (1) the House of Lords held that the Act did not prohibit a corporation carrying on the business of chemists, but the Lord Chancellor said that he who sells, whether he be master or servant, is struck at by the 15th section, where the words are, "any person who shall sell or keep open shop for the retailing, &c., of poisons." Under section 15, dealing with the qualification of the seller, the Pharmaceutical Society alone can take proceedings, but under section 17 anyone can, because it was desired to protect the public to the fullest extent. This shews how reasonable it is to hold that "address" means the address where the sale takes place; any person can then tell whether the name and address on the poison correspond with that on the shop. If what has been done here were not within the Act, an unqualified tradesman might sell drugs on commission in London for an Aberdeen chemist. Or one qualified chemist might have any number of branch shops in as many different towns, in none of which was a single qualified person. The object of the Act would be defeated, and the public would have no security in the purchase of drugs.

No counsel appeared for the respondent.

GROVE, J.—I regret that in an important case there should be an argument on one side only; it is always more satisfactory that on the question of the construction of a statute all possible considerations should be brought before the Court. I, however, am of opinion that the Justices did not draw the proper inferences from the facts stated as to the sale, and that the packet was not sufficiently labelled within section 17 of the Act. We are chiefly concerned with sections 15 and 17, and the former section says that any person who shall sell or keep an open shop for the

(1) 49 Law J. Rep. Q.B. 736; Law Rep. 5 App. Cas. 857.

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retailing of poisons, not being a duly registered chemist and druggist, shall be liable to a penalty. Now that seems to me to throw some light on section 17, for it requires qualification and registration to exist in the case of persons who shall sell.

It is true that the word "sell" is contradistinguished there from the words "keep open shop," but I think that only shews that it may apply to sales not in open shop, and it clearly contemplates affixing a penalty on the person who actually conducts the business in which the sale took place, and so I think it must be under section 17 when the question is who is the seller. I am of opinion, as applied to the present case, that the "seller" means the person who actually conducted the business of the sale, not the mere hand necessarily which handed over the article—here not the woman—but the person who kept the shop. Clearly Paterson was not the seller; he was living in another place, and was not in a position to comply with the Act. There are certain provisions as to things which have to be done at the time of sale—the seller must comply with these, such as entering the name of the purchaser in a book; a person living at a distance could not do this. It was impossible, therefore, that the chemist could be, as the Justices supposed, the seller of this poison. The seller was the person on the spot who kept the shop, and had power to regulate the sale, and the packet was to be labelled with his name and address, as the person controlling the sale. It was the meaning and intention of the Act that for the protection of the public the person who controls the sale of poisons should be a duly qualified person; and then section 17 requires his name and address to be put on the packet. Here Paterson had nothing to do with controlling the sale after he handed over the goods to the respondent. The answer to the question of the Justices must be in the negative, and the case must be remitted for them to decide in accordance with our judgment.

LOPES, J.—This case depends entirely on the real meaning of the word "seller" in section 17. When that is determined, there is no difficulty in the case. I will

only say that it appears to me clear that the word means the person who keeps the shop or place where the poison is, or under whose control the shop or place is. This is consistent with the general policy of the Act, which was passed for the protection of the public.

Appeal allowed and case remitted.

Solicitors—Burton, Yeates, Hart & Burton, agents for H. Glaisyer, Birmingham, for appellant.

1881. { THE QUEEN (on the prosecution
Nov. 22. { of THE GUARDIANS OF THE
PRESTWICH UNION) v. THE
OVERSEERS OF THE TOWNSHIP
OF MANCHESTER.

Poor—Order of Removal—Exemption by Residence—Widow—Residence partly during Life of Husband—9 & 10 Vict. c. 66. s. 1; 11 & 12 Vict. c. 111. s. 1.

After a husband and wife had, by residence in a union, acquired irremovability under the Poor Removal Act, 1846 (9 & 10 Vict. c. 66), s. 1, as amended by later Acts, the husband went to reside elsewhere and the irremovability was lost. He died. The widow shortly afterwards became chargeable to the union in which they had resided. An order was thereafter made for her removal:—Held, that, by reason of the break of her husband's residence, her residence during his life was not residence within the statute, and, consequently, her residence as widow not having alone sufficed to render her irremovable, she was removable.

Upon appeal by the overseers of the township of Manchester against an order, dated the 14th of April, 1881, of a stipendiary magistrate for the removal of Jessie Parkinson and her four children from the Prestwich Union to the township of Manchester, both in the county of Lancaster, the Court of quarter sessions confirmed the order, subject to a Case which in substance was as follows:—

Jessie Parkinson is the widow of Noble

The Queen v. Overseers of the Township of Manchester.

Parkinson. Noble Parkinson, with his wife and children, went, on the 19th of March, 1878, to reside in the township of Bradford, in the Prestwich Union, and continued to reside there up to the 22nd of January, 1880, on which date it is admitted that (in case he had then become chargeable) he, his wife and children were irremovable from the Prestwich Union. On the 22nd of January, 1880, he left his wife and children there and went to America in search of work, and intending to reside in America. There was no evidence whether he intended to fetch or send for his wife and children to America. He died in hospital at New York on the 13th of March, 1880.

Jessie Parkinson and her children became chargeable to the Prestwich Union on the 3rd of May, 1880, and continued so down to the date of the order of removal. The last place of settlement of Noble Parkinson admittedly was Manchester. The question for the opinion of the Court is, whether Jessie Parkinson and her children were removable from the Prestwich Union.

A rule having been obtained to shew cause why the order of removal and the order confirming it should not be quashed,

Leresche (on Nov. 22) shewed cause.—The question is, whether the widow was removable, for it is agreed that the removability of the children depends upon her removability. She was removable, not having resided since her husband's death, and before she became chargeable, for the period of one year, which now, by 24 & 25 Vict. c. 55. s. 1 and 28 & 29 Vict. c. 79. s. 8 (amending 9 & 10 Vict. c. 66. s. 1) confers irremovability. The break in the residence of the husband, by his departure to America with the intention of residing there permanently, terminated his irremovability, and therewith the irremovability of his wife—*The Queen v. Llanelly* (1). His death did not entitle his widow to the status which she had thus lost—*The Queen v. Manchester* (2) and *The*

Queen v. East Stonehouse (3). The present case is distinguishable from *The Queen v. Glossop* (4), where it was held that residence as wife and widow coalesced, for in that case there was no break in the husband's residence; and it is distinguishable also from *The Queen v. Elvet* (5), for there, again, no break of residence came into question, and the Court said only that they did not see how the receipt of relief by the father of the pauper after he had acquired irremovability affected the question of the removability.

He referred also to *The Queen v. St. Mary-lebone* (6) and *Wellington v. Whitchurch* (7).

Smyly, in support of the rule.—The husband's not remaining irremovable down to his death does not prevent the residence of the woman as wife from being counted in aid of her residence as widow, as, according to *The Queen v. Glossop* (4), it otherwise might have done. For, if that were so, then, conversely, a widow ought to be irremovable whenever her husband died irremovable, no matter how short her own residence. But *The Queen v. Cudham* (8) shews that she is removable if she has not herself resided the requisite period. That case shews that after her husband's death the question of a woman's removability does not turn upon her husband's removability, but upon the length of her own residence. The decision in *The Queen v. East Stonehouse* (3) was based upon the enactment of 9 & 10 Vict. c. 66. s. 1, that the time during which a person serves as a marine is to be excluded "for all purposes" from the computation of time of residence.

He referred to 24 & 25 Vict. c. 55. s. 3 and 29 & 30 Vict. c. 113. s. 17, which relate to irremovability of a deserted wife; but the Court said that it did not appear from the case whether there was any desertion, and therefore for the purpose of any question as to desertion the Court could only send the case back to be restated.

(3) 4 E. & B. 901; 24 Law J. Rep. M.C. 121.

(4) 12 Q.B. Rep. 117; 17 Law J. Rep. M.C. 171.

(5) 29 Law J. Rep. M.C. 17.

(6) 16 Q.B. Rep. 352; 20 Law J. Rep. M.C. 61.

(7) 4 B. & S. 100; 32 Law J. Rep. M.C. 189.

(8) 1 E. & E. 409; 28 Law J. Rep. M.C. 105.

(1) 17 Q.B. Rep. 40; 20 Law J. Rep. M.C. 179.

(2) 17 Q.B. Rep. 46.

The Queen v. Overseers of the Township of Manchester.

GROVE, J.—In this case, the pauper Jessie Parkinson and her husband resided together in the Prestwich Union, from the 19th of March, 1878, to the 22nd of January, 1880; and it is admitted that at the latter date they could not have been removed if they had then required relief, and the question of their removability had then arisen. The husband then went to America, and we must assume that he went there with the intention of taking up his residence there. There was thus a break in his residence; and the question is whether that break in his residence and in his irremovability prevents his widow from being entitled to rely in aid of her residence as widow upon her residence as wife. Mr. Smyly, in opposition to the order of removal, contends that she is so entitled, notwithstanding that break in her husband's residence. But it seems to me that the words of the statute do not compel us to arrive at the conclusion for which he contends—a conclusion involving the working of a very strange difference by the husband's death, the revival of a right which through her husband's departure to America the woman had lost. The words of the exemption, "shall have resided for five years" (now reduced to one year), are insufficient for so strange a conclusion without the aid of reasoning too subtle for my comprehension. I am of opinion that the order of sessions confirming the order of removal was right and must be affirmed.

LOPES, J.—I also think that the order of sessions should be affirmed.

I assume that there was in January, 1880, a break of the husband's residence in the Prestwich Union, and therewith of his irremovability from it. That being so, his wife also lost her irremovability, for the test of a married woman's irremovability is (at all events generally) whether her husband is irremovable. In March, 1880, she became a widow, and she and her children became in May, 1880, chargeable to the Prestwich Union, and remained so down to the 14th of April, 1881, when an order was obtained for their removal to the township of Manchester. Now it is quite clear, upon the cases, that if the husband had continued irremovable down

to his death his widow would have been irremovable. But the question is whether the break in her husband's residence previous to his death does not altogether alter the case. I am of opinion that by reason of the break in her husband's residence there was a break in her residence, and that, consequently, the order for the removal of her and her children was properly made.

BOWEN, J.—I have had much doubt in this case, and those doubts are not altogether removed; but I am not prepared to differ from the decision of the Court so far as it rests upon the ground that the break in the husband's residence was also a break in his wife's residence. The question is, whether the woman had resided in the Prestwich Union for the period which by statute confers irremovability. There is no doubt that she had in fact resided there during the full statutory period. But had she so "resided" there within the true meaning of the Act? The interval between her husband's death and her becoming chargeable was less than two months, and therefore it is necessary to see whether, next before her residence as widow, she had resided in the same union for at least ten months as wife. She did in fact reside there continuously for considerably more than ten months next before her husband's death. Did she in law so reside there? I am not prepared to say with certainty that she did; and therefore, although I cannot see that the break in her husband's irremovability would in itself render her removable, still, regarding it as a break in her residence, I am not prepared to differ.

Order of sessions confirmed.

Solicitors—Johnson & Weatheralls, agents for Lings, Manchester, for appellants; Chester & Co., agents for Farrington & Crofton, Manchester, for respondents.

1881. }
Dec. 14, 20. } THE QUEEN v. PAGET.

Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6 and 35—Railway Clauses Consolidation Act, 1845 (8 Vict. c. 20), ss. 103, 145, 146, 147—Penalty—Criminal Offence—"Civil debt"—Distress Warrant—Imprisonment.

An offence under section 103 of the Railway Clauses Consolidation Act, 1845, is a criminal offence, and the penalty recoverable under that section is not a "civil debt" within the terms of section 6 of the Summary Jurisdiction Act, 1879; nor do the provisions of section 35 of that Act apply to such a case. The magistrate may on conviction and non-payment issue a distress warrant under section 146 of the Railway Clauses Consolidation Act, 1845, and if sufficient distress is not found shall imprison the defendant under section 147.

Quære, whether the magistrate is bound on non-payment forthwith to issue a distress warrant.

This was an application for a *mandamus* directed to John Paget, Esq., metropolitan magistrate, commanding him to entertain an application for a warrant for the arrest of one Thomas Chapman, under section 2 of Jervis's Act (11 & 12 Vict. c. 43); or, in the alternative, to hear the case in the absence of Thomas Chapman under section 145 of the Railway Clauses Consolidation Act, 1845 (8 Vict. c. 20).

It appeared from the affidavits that on the 22nd of October the magistrate granted a summons against Thomas Chapman, under section 103 of the Railway Clauses Consolidation Act, 1845 (1), for travelling

(1) Railway Clauses Consolidation Act, 1845, s. 103: "If any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall for every such offence forfeit to the company a sum not exceeding 40s."

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on the line of the Great Western Railway Company without having previously paid his fare, and with intent to avoid payment thereof.

The summons was duly served, the defendant failed to appear, and an application was made on behalf of the company to the magistrate either to issue a warrant for the apprehension of the defendant under section 2 of Jervis's Act (11 & 12 Vict. c. 43), or to hear the case in the defendant's absence under section 145 of the Railway Clauses Consolidation Act, 1845 (8 Vict. c. 20).

The magistrate held that the penalty recoverable under sections 103 and 145 of the Railway Clauses Consolidation Act, 1845 (1) was a civil debt within the meaning of section 6 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49) (2), and therefore that a warrant

(2) Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 6: "Where under any Act, whether past or future, a sum of money claimed to be due is recoverable on complaint to a Court of summary jurisdiction, and not on information, such sum shall be deemed to be a civil debt, and if recovered before a Court of summary jurisdiction shall be recovered in the manner in which a sum declared by this Act to be a civil debt recoverable summarily is recoverable under this Act, and not otherwise; and the payment of any costs ordered to be paid by the complainant or defendant in the case of any such complaint shall be enforced in like manner as such civil debt, and not otherwise."

Section 35: "Any sum declared by this Act, or by any future Act, to be a civil debt, which is recoverable summarily, or in respect of the recovery of which jurisdiction is given by such Act to a Court of summary jurisdiction, shall be deemed to be a sum for payment of which a Court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Acts: Provided as follows: (1) A warrant shall not be issued for apprehending any person failing to appear to answer any such complaint; and (2) An order made by a Court of summary jurisdiction for the payment of any such civil debt as aforesaid, or of any instalment thereof, or for the payment of any costs in the matter of any such complaint, whether ordered to be paid by the complainant or defendant, shall not, in default of distress or otherwise, be enforced by imprisonment, unless it be proved to the satisfaction of such Court or of any other Court of summary jurisdiction for the same county, borough or place, that the person making default in payment of such civil debt, instalment or

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could not be issued by reason of section 35 of the same Act (2).

The magistrate then heard the evidence in the absence of the defendant, and found as a fact that sufficient evidence had been given to warrant a conviction, but he declined to convict, on the ground that if he convicted under section 103 of the Railway Clauses Consolidation Act, 1845, then he was bound under section 146 (3) on

costs, either has, or has had since the date of the order, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same, and in any such case the Court shall have the same power of imprisonment as a County Court would for the time being have under the Debtors Act, 1869, for default of payment if such debt had been recovered in that Court, but shall not have any greater power.

"Proof of the means of the person making default may be given in such manner as the Court to whom application is made for the commitment to prison think just, and for the purposes of such proof the person making default, and any witnesses, may be summoned and examined on oath according to the rules for the time being in force under this Act, in relation to the summoning and examination of witnesses, or, if no such rules are in force, to the rules for the like purpose made in pursuance of the Employers and Workmen Act, 1875."

(3) Railway Clauses Consolidation Act, 1845, s. 146: "If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such Justices, or either of them, shall issue their or his warrant of distress accordingly."

Section 147: "It shall be lawful for any such Justice to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognisance or otherwise, to the satisfaction of the Justice for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of distress it shall appear to the Justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such Justice whereon to levy such penalty or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the Justice, then such Justice shall by warrant cause such offender to be

non-payment to issue a distress warrant, and in default of distress to imprison under section 147 (3).

But if the case fell, as he was of opinion it did, within the provisions of section 6 of the Summary Jurisdiction Act, 1879 (2), then by section 35 (2) of that Act imprisonment in default of distress would, unless under the special circumstances specified in that section, be illegal.

A rule *nisi* had consequently been obtained for a *mandamus* as above.

No counsel appeared to shew cause.

R. S. Wright, in support of the rule (4).—I admit that if it is a civil debt within the meaning of section 6 of the Summary Jurisdiction Act, 1879 (2), the magistrate was right, but I contend it does not fall within the words of that section.

It is not a sum of money claimed to be due. The sum is not due until conviction. The offence dealt with in section 103 (1) of the Railway Clauses Act, is one of a criminal character involving fraud.

Section 6 (2) was intended to apply only to such sums as were recoverable under the old law by "order" and not by "conviction."

Cur. adv. vult.

The judgment of the Court (5) was delivered (on Dec. 20) by

FIELD, J.—This is in substance a rule calling upon Mr. Paget, the metropolitan police magistrate, to shew cause why he should not proceed with and determine a complaint preferred on behalf of the Great Western Railway Company against Thomas Chapman, for the offence of having travelled in a carriage of the company without having paid his fare, with intent

committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture and costs be sooner paid and satisfied."

(4) On the argument for the rule *nisi* on the suggestion of the Court, leave was given to counsel to obtain a rule under Jervis's Act if it should appear more desirable—see *The Queen v. Price* (49 Law J. Rep. M.C. 49; Law Rep. 5 Q.B. D. 800)—Mr. Justice Grove intimating that leave would be sufficient, as the practice of drawing the rule in the alternative was objectionable.

(5) Field, J., and Cave, J.

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to avoid payment, and for which offence Chapman had by section 103 of the Railways Consolidation Act of 1845 (1), become liable to forfeit to the company a sum not exceeding 40s., and which forfeiture was by the 145th section of the same Act made recoverable by summary proceeding before two Justices, by which section, on complaint being made to any Justice he is to issue a summons requiring the party complained against to appear before two Justices, and upon appearance, or, in his absence, after proof of service, it is provided that it shall be lawful for any two Justices to proceed to the hearing of the complaint (and that although no information in writing or in print shall have been exhibited before them), and upon proof of the offence to convict the offender, and upon such conviction to adjudge the offender to pay the forfeiture incurred; and by section 146 (3) the amount may be levied by distress, it being provided that the Justices shall issue their warrant. Imprisonment follows (section 147) (3) if no sufficient distress be found.

Under that 145th section, the company accordingly made a complaint (without any written information), upon which the magistrate issued a summons.

Chapman did not, however, appear at the return, and evidence having been given as to the offence, Mr. Paget was satisfied upon the evidence that the offence had in fact been committed.

Mr. Paget was quite willing to comply with so much of the 145th section as required him to adjudge the defendant to pay the 40s., but he declined to "convict" or issue a distress warrant, conceiving upon the best construction that he could put upon the statute (which is not so clear as might be wished) that sections 6 and 35 of the Summary Jurisdiction Act of 1879 (2) had tied his hands by substituting the provisions contained in those sections for those of the Act of 1845, and that he had no power under the circumstances to convict or issue a distress warrant forthwith; and as the applicant was not willing to accept a mere order for payment, he declined to proceed any further under these circumstances. Applicant obtained a rule for a *mandamus* to proceed (afterwards converted into a rule to shew cause why

he should not proceed)—that is, convict and issue a distress warrant.

Upon the argument before us, Mr. Wright, on behalf of the applicant, contended that the provisions of section 145, and of the following sections of the Railway Clauses Consolidation Act, were unaffected by sections 6 and 35 of the Summary Jurisdiction Act (2), and that it was the magistrate's duty, being satisfied, as he was, upon the evidence that the offence had been committed, to convict and adjudge the payment of such forfeiture not exceeding 40s. as he thought right, and forthwith to issue his distress warrant.

Mr. Paget, in the affidavit which he made, by way of shewing cause against the rule, disputed this proposition, reaffirming the view which he took at the hearing.

Now before proceeding to consider the meaning and effect of the Summary Jurisdiction Act of 1879, it will be well to review the previous state of the law affecting summary proceedings in order the better to understand the scope and object of the enactments of the later statute.

The code in reference to summary proceedings before Justices was the Act of 1848, known as Jervis's Act, by which two modes of commencing proceedings are pointed out—first, exhibiting an information, and, second, making a complaint.

The distinction in them runs through the Act, but there is very little real substance in it after whichever of them may have been adopted has performed its twofold effect of informing the defendant of the nature of the complaint against him and procuring or enforcing his appearance.

For that reason they cease to be of any practical importance—see *Blake v. Beach* (6). The proceedings continue throughout without reference to them to their respective natural results—that is, conviction or order for the payment of money—the first being in fact a criminal proceeding, to end in fine or imprisonment; the latter, a civil proceeding, to enforce payment of a sum of money previously ascertained to be due. Now the object of the Act of 1879 seems to me clearly to have been to soften the rigour of the mode of proceedings for

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a conviction for an offence, and to remove the remedy for non-payment of money ascertained to be due out of the category of criminal procedure. Accordingly I find three series of sections—first, those relating to indictable offences, with which at present we have nothing to do; secondly, to convictions; and thirdly, to sums of money due which the statute (section 6) defines to be “civil debts;” and the question, therefore, in the present case, is, under which of the two latter heads does the recovery range itself?

If under the first, the provisions are found in sections 4, 5 and other sections; if under the second head, in sections 6 and 35 (2)—section 6 enacting that a sum “claimed to be due and recoverable on complaint and not on information” shall be a “civil debt;” and section 35, that a sum declared to be a “civil debt,” which is recoverable summarily, shall be deemed to be a sum for which a Court of summary jurisdiction has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act.

The question, therefore, really is, whether under Jervis's Act the case now under consideration is one for which the defendant is liable by law upon summary conviction for the same to be imprisoned, fined or otherwise punished, or whether it is one in which the Justices have authority by law to make an order for payment of money—see 11 & 12 Vict. c. 43. s. 1: if the former, the power of conviction is not taken away; if the latter, all that the magistrate has power to do is to make an order for the payment, which, in the present case, he was quite willing to do; and with great respect to the magistrate in the present case, whose experience and knowledge of his duties are so conspicuous, I am obliged to come to a different conclusion from that which he has arrived at.

Now, following the precise language of section 6 (2), 40s., or less, is a sum of money, and it is a sum recoverable by section 145 on complaint to a Court of summary jurisdiction; and looking to the distinction existing in Jervis's Acts, I am inclined to think that within the meaning of the Act of 1879 the 40s., or less, was a sum of money which the Legislature considered was not recoverable on information; but

it seems to me that the forfeiture claimed here was not “a sum of money claimed to be due and recoverable on complaint to a Court of summary jurisdiction.”

It is true that the forfeiture presumably is a forfeiture to the Great Western Railway Company, but that does not bring the case within the class of civil remedy, it still remains criminal—*Hearn v. Garton* (7). A fine or penalty is matter of criminal and not civil proceedings—*Mellor v. Denham* (8). At the time of the hearing no sum of money was due to anybody, until the magistrate convicted and adjudged the amount, which might range from $\frac{1}{4}d.$ to 40s. The Great Western Railway Company did not claim any sum due to them; their claim was that the magistrate should convict, and, if convicting, should adjudge the penalty at such amount as in his good judgment he should assess it.

It, therefore, seems to me that the case does not fall within the 6th and 35th sections of the Summary Jurisdiction Act (2), that it is the duty of the magistrate to convict, and that he must proceed thus far. I gather that when he has reached that stage some question may arise as to his duty to issue a distress warrant forthwith. Now section 21 of the Act of 1879 would seem to apply to a sum of money adjudged to be paid either on conviction or order, and to vest in the magistrate a discretion upon conditions as to time or otherwise. I understand Mr. Wright to argue that no such discretion existed in the present case, but not having the view of the magistrate before us upon that head, it does not seem to be advisable at present to express any view as to it. Mr. Wright said that in such a case as the present, where the offender may not be known, or may be eluding punishment, it was not desirable to refuse to issue the warrant forthwith, and that Mr. Paget is bound in a ministerial manner to issue it.

If Mr. Paget, in his discretion (which I am sure he will exercise with regard to all the circumstances of the case), issue the warrant forthwith, no further question will arise; if he considers he has a dis-

(7) 2 E. & E. 66; 28 Law J. Rep. M.C. 216.

(8) 49 Law J. Rep. M.C. 89; Law Rep. 5 Q.B. D. 467.

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cretion, and the applicant thinks it right to question it, that will form the subject of fresh consideration when the Court will have before it the grounds of Mr. Paget's determination.

Rule absolute.

Solicitors—R. R. Nelson, for the prosecution.

1881. } LAWS (appellant) v. ELTRINGHAM
Dec. 6. } (respondent).

Malicious Injuries to Property Act (24 & 25 Vict. c. 97), s. 52—Damage to Right of Herbage—Real and Personal Property—Information—Prosecutor—Ownership.

The respondent was charged, upon an information laid under 24 & 25 Vict. c. 97. s. 52, with having committed wilful damage to certain herbage growing on the Town Moor at Newcastle, the property of the stewards and wardens of the freemen. It was proved that damage to the amount of one penny had been committed by playing at bowls on the herbage growing on the moor, the fee-simple of which was vested in the corporation of Newcastle, subject to certain rights of herbage on the part of the freemen, whose interests the stewards and wardens were, by Act of Parliament, appointed to preserve:—Held, that a right to herbage was not "real or personal property" within the meaning of 24 & 25 Vict. c. 97. s. 52, which was intended to apply to actual physical damage done to something tangible and visible, as distinguished from a mere legal right. Held also (per GROVE, J.), that even if the herbage right in question was property within section 52, the ownership of the property should have been laid in the corporation, and not in the persons mentioned in the information.

CASE stated under 20 & 21 Vict. c. 43.

At a petty sessions holden at Newcastle on the 7th of September, 1881, an information was preferred by the appellant, acting on behalf of the stewards and wardens, under 24 & 25 Vict. c. 97. s. 52, charging the respondent with unlawfully

and wilfully committing damage, injury and spoil to certain grass and herbage growing on the Town Moor, the property of the stewards and wardens of the freemen and the widows of freemen of the borough, and thus doing damage to an amount not exceeding 5*l.*, contrary to the statute.

It was found that the respondent, who was not a freeman or inhabitant of the borough, had committed damage to the amount of one penny, by playing bowls on the grass and herbage growing on the Town Moor (which consists of about 1,200 acres of grazing and agricultural land), and that the fee-simple of the soil of it was vested in the corporation, subject to a right of herbage (or pasturage) for two milch cows respectively in the resident freemen or free burgesses of the borough and their widows.

It was further proved that the public had and exercised free access to the Town Moor for walking and riding, except a small portion thereof which was enclosed for the purpose of cultivation, and within which it was admitted the respondent had not bowled.

By section 1 of the Town Moor Act, 1774 (14 Geo. 3. c. 214), an Act for confirming to the resident freemen or burgesses and resident widows of deceased freemen or burgesses of the town of Newcastle-upon-Tyne their full right and benefit to the herbage of the said Town Moor, it is enacted "that the full right and benefit to the herbage of the parcels of ground called the Town Moor, Castle Leazes and Nuns Moor, for two milch cows respectively, in such manner as has been used, shall be and is hereby confirmed and established to the resident freemen or burgesses of the said Town Moor, Newcastle-upon-Tyne, and resident widows of deceased burgesses of the same town for ever; but that such right shall be subject to such demise, restrictions and regulations for the culture and improvement of the said Town Moor, Castle Leazes and Nuns Moor," as in the said Act is mentioned.

By section 10 of the same Act it is also enacted "that nothing in this Act contained shall extend to take away, annul or alter any of the rights which the corpo-

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ration of Newcastle-upon-Tyne, as owners of the soil of the said Town Moor, Castle Leazes and Nuns Moor are entitled unto, or to give to them any new or other rights than they are now entitled to."

In the Newcastle-upon-Tyne Improvement Act, 1870 (33 & 34 Vict. c. 120)—an Act for the better management of the Town Moor of the said borough of Newcastle-upon-Tyne, and for other purposes—is contained a recital, as follows:—

"And whereas the corporation are entitled to the soil of the Town Moor for an estate in fee-simple, and the same is subject to a right or benefit of herbage in the resident freemen or burgesses of the said borough, and the resident widows of deceased freemen or burgesses of the borough (which right or benefit is in this Act referred to as the herbage right)."

By section 6 of the same Act it is enacted that "there shall be for the purposes of this Act a committee of the stewards and wardens chosen out of, and by, the general body of stewards and wardens on Michaelmas-guild day in each year, before the commencement of the business of the guild, and consisting of nine members, of whom three shall be, by virtue of this Act, authorised and required to act for, and on behalf of, the stewards and wardens and freemen, and widows of freemen, for all purposes relating to the Town Moor."

The respondent contended, *inter alia*, first, that the committee of the stewards and wardens were not the proper persons to lay the information; second, that as the grass was growing grass it was part of the freehold, and, as such, the property of the corporation; third, that no damage had been done to real or personal property belonging to the freemen, who had no interest beyond the right or benefit of the herbage.

The Justices dismissed the information on the ground that the corporation were the owners of the soil and herbage subject to right of the benefit of the herbage on the part of the freemen, and such right was not real or personal property within the statute.

The questions for the opinion of the Court were—

1. Was the herbage right in question

real or personal property within the meaning of 24 & 25 Vict. c. 97. s. 52?

2. If so, was the ownership of such property properly laid in the persons mentioned in the information?

The Solicitor-General (Sir F. Herschell, Q.C.) and Joel, for the appellant.—The herbage is property, to whomsoever it belongs, within 24 & 25 Vict. c. 97. s. 52 (1), and the ownership was rightly laid in the stewards and wardens, who were constituted a *quasi* corporation. A grant to a particular class incorporates them.

[GROVE, J.—Herbage is real property while growing on the soil, and, as such, belongs to the corporation.]

Even if this be admitted, that is no reason why the freemen should not lay an information—*Tarry v. Newman* (2). And even if the property was wrongly laid, that is no reason why the Justices should dismiss the information—*Ralph v. Hurrell* (3). The enquiry should have been limited to the question whether an offence had been committed; and it was sufficient to prove that the damage done was unlawfully and wilfully caused.

Wills and V. Fitzgerald, for the respondent.—No damage has been done to the rights of the freemen. The information in a case of this kind should be laid by the party who has suffered some injury. Anybody, no doubt, may inform in cases where the act done is of a public nature, or a crime, but it would be absurd to say that where a private injury has been done anybody may take proceedings under 24 & 25 Vict. c. 97, however unwilling the owner may be to prosecute. Again, the respondent's act does not amount to an injury to real or personal property within the meaning of the statute, which relates to property visible and corporeal, and not to a mere

(1) By the Malicious Injuries to Property Act (24 & 25 Vict. c. 97), s. 52: "Whoever shall wilfully or maliciously commit any damage, injury or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof before a Justice of the peace," be liable to certain penalties therein mentioned.

(2) 15 Mee. & W. 645; 15 Law J. Rep. M.C. 160.

(3) 44 Law J. Rep. M.C. 145.

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statutory right, which was all the freemen could claim.

Joel, in reply.—The words of the statute are very large, namely, injury to any description of real and personal property whatever (4).

GROVE, J.—I must admit that my mind has been tempted to wander somewhat, during the arguments urged on behalf of the appellant, from the real questions submitted to us by the Justices, which are, in my judgment, far from difficult. I quite agree that the Court are not necessarily bound to confine their decision to merely answering the question left by the Justices, and whether they will do so or not must depend upon the circumstances of each particular case. If questions are inadvertently framed so as not to raise the real question intended by the parties to be raised, the Court will sometimes look beyond the question submitted, provided they are warranted in doing so by the facts found in the Special Case. This is not one of those cases in which we can safely go beyond the question left for our consideration. To the first question, namely, whether a right to herbage is real or personal property within the 52nd section of the Malicious Injuries to Property Act, I can conceive but one answer. I think such a right is neither real nor personal property within the 52nd section, which appears to me to apply to something real and tangible, and not a mere legal right. A glance at the various sections of the statute will shew that the intention of the Legislature was to confine its operation to actual physical damage as distinguished from a mere right which may be the subject of an action. I think an incorporeal right such as this is clearly outside the operation of the statute.

Then comes the second question, which becomes immaterial after the answer I have given to the former one, though, if it were material, I should have decided that the corporation were the proper parties to be inserted as owners.

(4) A portion of the reply dealt with questions not raised by the Case as stated by the Justices, and which the Court refused to entertain, for reasons stated by Grove, J. (See *Knight v. Halliwell*, 43 Law J. Rep. M.C. 113.)

LOPES, J.—I only intend to give an answer to the first question, which is whether the right of herbage is real or personal property within the 52nd section. Now there are two kinds of real property, corporeal and incorporeal. There is real property which is tangible and visible, as distinguished from a right of way or a right of common; and, in my judgment, the words "real or personal property" in section 52 only relate to corporeal, tangible, visible property, and not to property which is incorporeal, invisible and not tangible. The magistrates, therefore, acted quite properly in dismissing the information.

Appeal dismissed.

Solicitors—Pyke & Parrott, agents for J. G. Joel, Newcastle-on-Tyne, for appellant; Fallows & Brown, agents for Holmes & Robson, Newcastle-on-Tyne, for respondent.

1881. } RICHARDS (*appellant*) v. MACBRIDE
Dec. 7. } (*respondent*).

Licensing Acts—Intoxicating Liquors, sale of—Sunday Closing (Wales) Act, 1881 (44 & 45 Vict. c. 61), s. 3—Time of Commencement of Act—Construction.

Section 3 of the Sunday Closing (Wales) Act, 1881, provides that the Act "shall come into operation in each division or place in Wales on the day next appointed for the holding of the general annual licensing meeting for that division or place." The Act received the royal assent on the 27th of August, 1881. The general annual licensing meeting for S. was held on the 8th of September, the date having been fixed, in accordance with 9 Geo. 4. c. 61. s. 2, three weeks previously. Appellant was convicted for the sale of liquor on the 11th of September, being a Sunday:—Held, that the conviction was wrong, as the Act would come into operation in each division only on the day which after the passing of the Act should be next appointed for holding the general annual licensing meeting.

This was a Case stated by two magistrates of the county of Flint, who had convicted the appellant upon an informa-

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tion charging him with having on the 11th of September, 1881, at the township of Saltney, kept open his house for the sale of intoxicating liquors during the said day, the same being Sunday, at the hour of twenty minutes past six in the evening, contrary to the statute—the Sunday Closing (Wales) Act, 1881.

The general annual licensing meeting for the division in which Saltney is situate was held on the 8th of September, 1881. The three weeks' notice of such meeting required by 9 Geo. 4. c. 61. s. 2 was duly given. The Sunday Closing (Wales) Act, 1881, received the royal assent on the 27th of August, 1881.

By section 1, so soon as it comes into operation, the Act requires the closing in Wales of all premises in which intoxicating liquors are sold or exposed for sale by retail during the whole of Sunday. The sale by the appellant on the 11th of September was at an hour at which, independently of this Act, he was entitled to sell intoxicating liquors.

Poland, for the appellant.—The conviction was wrong, because the Act had not come into operation. The words in section 3 must be read in their natural sense: the day next appointed for holding the annual meeting will for this division be in 1882. "Next" means "next after the passing of the Act; but this day, the 8th of September, was necessarily appointed three weeks previously, long before the 27th of August. The meeting may be held any day between the 20th of August and the 14th of September, but three weeks' notice must be given of it; it was therefore manifestly impossible to appoint the meeting after the 27th of August. In some divisions the meeting itself was held before the 27th of August, and it cannot be contended that the Act applies there. A construction which would produce such inequality will not be placed upon the plain words.

J. E. Bankes, for the respondent.—The preamble and whole object of the Act must be looked at—*Halton v. Cave* (1). The word "appointed" is a word of description: it is used to identify the day, as

distinguished from adjournments. If the day occurs after the 27th of August, the words are satisfied. The argument from hardship is nothing. A man would require a seven-day licence, so as to sell to *bona fide* travellers.

He cited also *Myers v. Perigal* (2).
Poland, in reply.

GROVE, J.—I am of opinion that the appellant is entitled to our judgment, because on the proper construction of the Act the Justices were wrong in convicting.

The words which we are asked to construe admit grammatically of no reasonable doubt. They are these: "This Act shall commence and come into operation with respect to each division or place in Wales on the day next appointed for the holding of the general annual licensing meeting for that division or place."

If the clause were taken alone without considering anything outside the Act, I should not have entertained any doubt that the words mean the day which after the passing of the Act shall be next appointed for the holding of the meeting. I cannot assume that there is a mistake in the Act of Parliament, for if I did, I should have to put a construction on the words contrary to their plain meaning. If the result should be not what was intended, the remedy is by legislation. I quite admit that if the words are so ambiguous as to be capable of being construed in two senses we may look at what is in other parts of the Act to discover the true meaning, and at the Act itself to see what is its object if a remedial Act, and what it prohibits if it is a penal Act. I do not, however, find anything in this Act tending to shew that "day next" means "next day," and we are therefore asked, simply because the Legislature contemplated that the Act would be beneficial, to infer that it was intended to come into operation as soon as possible. Such an argument would apply to all Acts.

Is there then any overwhelming necessity to deviate from the plain words used? I think not. It may well be that the Legislature intended to give all parties time for consideration; or, on the other

(1) 1 B. & Ad. 558.

(2) 2 De Gex, M. & G. 599; 22 Law J. Rep. Chanc. 431.

Richards v. MacBride.

hand, it may be perfectly true that the draftsman thought the Act would be passed earlier in the session. We, however, cannot decide this case on any such suggestion, but I may remark that if it be true it throws light on the draftsman's intention as to the meaning of the words he used at the time he used them.

As to the arguments that were addressed to us of uncertainty and inequality, I think that a construction which would cause the Act to confer its benefits on or cause injury to some of the divisions and not others would be more unequal than that which postpones its operation for a year; and so, the words being in their ordinary grammatical construction clear and definite, I see no countervailing reason why the Court should depart from them.

LOPES, J.—I agree in the judgment given by my brother Grove. I cannot doubt that it was the intention that this Act should come into operation throughout Wales during the present year. The Court, however, is bound by the words of the Act as they are, and from the moment when they began to speak. The Act received the royal assent on the 27th of August, 1881, and speaks from that day. The Act then in section 3 says—[His Lordship then read the section]. We have been invited by the respondent to read it as the "next day appointed," but in my opinion we cannot do this, unless the words in their ordinary grammatical sense are so repugnant to the rest of the Act as to be absurd. I think they are not; and so being bound to read the words in their ordinary sense, it is plain that the Act cannot come into operation till next year, because by 9 Geo. 4. c. 61 the general annual licensing meeting must be appointed—that is to say, the date for holding it fixed—not later than the 24th of August, and that would be before the Act received the royal assent.

Judgment for the appellant.

Solicitors—Cunliffe, Beaumont & Co., agents for W. H. Churton, Chester, for appellant; Simpson, Hammond, Richards & Co., agents for Kelly & Keene, Mold, for respondent.

1881. } PICKERING HIGHWAY BOARD v.
Dec. 1. } BARRY.

Highway—Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 23—Excessive Weight and Extraordinary Traffic—Carting Building Materials.

Upon the hearing of a complaint made by a highway board under section 23 of the *Highways and Locomotives Amendment Act, 1878*, for the purpose of recovering from the respondent extraordinary expenses incurred by the board by reason of traffic conducted by the respondent, it appeared that the respondent, for a period of seven months, almost daily carted along a road which was ordinarily used for light agricultural traffic large quantities of bricks, stone, lime, sand, timber and other building materials, for the purpose of constructing a dwelling-house and out-buildings. The weight of the load was so great as to necessitate the use of trails in going down hill; these trails were not required for the ordinary traffic, and the use of them caused part of the damage complained of. The Justices having found that the appellants were not entitled to recover the extra expense to which they had thereby been put,—Held, that they were warranted in finding that the weight was not excessive nor the traffic extraordinary within the meaning of the Act.

Per LOPES, J.: *Excessive weight and extraordinary traffic to be within the Act must mean something excessive in weight or extraordinary in kind of traffic, either as compared with what is usually carried over roads of the same nature in the neighbourhood, or as compared with that to which the road in its ordinary and fair use may reasonably be subjected. It would not be sufficient to compare the weight and traffic complained of with the traffic usually carried on the particular road.*

CASE stated by Justices under 20 & 21 Vict. c. 43.

At a petty sessions held at Pickering Lythe East, in the North-Riding of the county of York, the respondent appeared in answer to a summons issued in pursuance of the complaint of the appellants under the *Highways and Locomotives Amendment*

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Pickering Highway Board v. Barry.

Act, 1878 (41 & 42 Vict. c. 77), s. 23 (1), for the purpose of recovering from the respondent extraordinary expenses incurred by the appellants by reason of traffic conducted by the respondent.

The following facts, proved on behalf of the appellants, were thus stated by the Justices :—

The appellants are the authority liable to repair the highways within the district of Pickering Lythe East, in the North-Riding of the county of York.

On the 24th of February, 1881, the surveyor of the appellants furnished to them a certificate, such as is required by the 23rd section of the Highways and Locomotives Amendment Act, 1878 (1), that extraordinary expenses had been incurred by the appellants in repairing the highways by reason of damage caused by excessive weight passing along the same, or extraordinary traffic conducted over the same by the order of the respondent.

Prior to September, 1879, the highways in question were put in repair, and about 100 tons of metal were put upon them, a quantity which in previous years had always proved sufficient to keep them in good order during the year.

The ordinary traffic on the said highways is light agricultural traffic, although occasionally a waggon, laden with manure or lime, weighing about a ton and a half, or more, passes along the said highways; but ordinarily there is so little of this heavy traffic that it does not affect the wear and tear of the said highways to any appreciable extent.

(1) 41 & 42 Vict. c. 77. s. 23: "Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the Court having cognisance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid."

In October, 1879, the respondent commenced to build a dwelling-house and out-buildings at Lindhead, in the said district, and he caused to be carted along the said highways, between October, 1879, and April, 1880, large quantities of bricks, stone, lime, sand, timber and other building materials to be used in the construction of the said dwelling-house and out-buildings. These materials were carted in carts which generally contained thirty or thirty-five cwt. each. The carts were almost daily on the road during a great portion of the period between October and April. Each of the carts was drawn by two horses and required the assistance of an additional horse at certain parts of the said highways.

The weight of the loads was frequently such that the drivers of the carts, when going down hill, used and were obliged to use trails to take the strain off the horses. The use of the trails caused part of the damage to the said highways complained of by the appellants.

The ordinary traffic on the said highways was and is conducted without the use of trails.

The traffic which the respondent caused to be conducted as aforesaid was in aggregate weight and in quantity excessive and extraordinary as compared with the ordinary traffic along the said highways, and was in extent greatly in excess of the total amount of traffic which ordinarily passed along the said highway during a period of two or three years.

The portion of the said highways so used by the respondent was damaged by his said traffic, and a sum of 15*l.* 2*s.* 8*d.* was necessarily expended by the appellants in repairing the said damage. The weight and quantity of the said traffic of the respondent alone occasioned the expenditure of the said sum of 15*l.* 2*s.* 8*d.*, and but for the said traffic of the respondent, so conducted as aforesaid, the said expenditure would have been unnecessary.

The amount so expended is greatly in excess of the average expense of repairing highways in the neighbourhood, and the sum of 15*l.* 2*s.* 8*d.* is an extraordinary expense caused by reason of the damage done to the said highways by the respondent's said traffic.

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The appellants claimed to be entitled to an order directing the respondent to pay to them the said sum of 15*l.* 2*s.* 8*d.* as extraordinary expense incurred by the appellants within the 23rd section of the Highways and Locomotives Amendment Act, 1878.

The solicitor for the respondent contended that the 23rd section of the Highways and Locomotives Amendment Act, 1878, did not apply in a case where the damage was caused by an extraordinary quantity of traffic which differed not materially in character, but chiefly in its weight and amount, from the traffic to be expected on the said highway, and cited the judgment of Grove, J., in the case of *Lord Aveland v. Lucas* (2) as an authority in support of his contention.

The Justices were of opinion that the 23rd section of the Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), did not apply to entitle the appellants to an order for the payment of the said sum of 15*l.* 2*s.* 8*d.*, and dismissed the summons.

From this decision appeal was now brought.

Alfred Wills, Q.C. (*Gainsford Bruce* with him), for the appellants, contended on the above facts that the appellants were entitled to recover the extra expenses incurred in repairing the highway, and cited *Lord Aveland v. Lucas* (2), *Wallington v. Hoskins* (3), *Williams v. Davies* (4).

The respondent did not appear.

GROVE, J.—This is a class of case in which I think the Court ought not to interfere with the decision of the Justices, unless it appears to be clearly wrong. The question in all these cases must be, to a great extent, one of fact—one which, from their knowledge of the locality and of the nature of the traffic, the Justices are, in general, the best parties to decide. On the facts of this case I cannot say that the

Justices are wrong, and therefore I think their judgment should be affirmed.

It does not appear that any particular weight was excessive, but that the aggregate weight of the number of carts was excessive. The Justices, who know the nature of the road, the traffic and the wants of the neighbourhood, have found the weight was not excessive, and I cannot say that they have come to an erroneous conclusion. Had they specially found that the damage was caused by the trails which appear to have been used, and that this was a new apparatus which had never been used before, then they might have come to a different conclusion, but they do not find that the use of the trails was unusual. Under these circumstances I can see no element in the case to induce me to hold the decision of the magistrates to have been wrong.

With regard to that part of my judgment in *Lord Aveland v. Lucas* (2) in which I am reported to have said on the construction of the Act, that extraordinary weight and extraordinary traffic do not mean some extraordinary quantity of traffic caused by the carriage of materials for the building of a mansion, I wish to add that I did not intend to use the word "mansion" as meaning more than an ordinary dwelling-house. I do not mean to say that there might not be excessive weight or extraordinary traffic for an extraordinary building such as a college or workhouse, but that the building of an ordinary dwelling-house would not be exceptional.

I do not attempt a definition of what I feel is peculiarly difficult to define. The question of what constitutes excessive weight or extraordinary traffic must, to a great extent, depend upon the opinion of those who know the neighbourhood. I therefore hold the opinion of the Justices to have been right, and give judgment for the respondent.

LOPES, J.—I am of the same opinion. It is sought to charge the respondent with an exceptional burden, because of damage which it is said he has caused to the highway through using it in an exceptional way.

I think that the Legislature intended something excessive in weight or extra-

(2) 49 Law J. Rep. C.P. 643; Law Rep. 5 C.P. D. 211; affirmed on appeal, Law Rep. 5 C.P. D. 351.

(3) 50 Law J. Rep. M.C. 19; Law Rep. 6 Q.B. D. 80.

(4) 44 J.P. 847.

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ordinary in kind of traffic, either as compared with what is usually carried over roads of the same nature in the neighbourhood, or as compared with that to which the road in its ordinary and fair use may reasonably be subjected. It would not be sufficient to compare the weight and traffic complained of with the traffic usually carried on the particular road, because the traffic usually carried might be of the highest kind; but surely the Legislature never intended that a man was not to use the road for carrying materials for building a dwelling-house, farm-house or barn, provided he used it in a reasonable way for those purposes. The comparison must be larger, and I think the definition I have given, if not exhaustive, will be found useful. If this is a correct definition, the facts stated do not bring the case within it, and the Justices have come to a right conclusion. I agree with my brother Grove that this is a case in which we should be disinclined to interfere with the decision of the Justices, who, from their knowledge of the locality, have special opportunities of arriving at a right conclusion.

Judgment for the respondent.

Solicitors—Williamson, Hill & Co., agents for G. Taylor, of Scarborough, for appellants.

1881. { MERRICKS (appellant) v. CAD-
Dec. 7. { WALLADER AND ANOTHER (re-
spondents).

Fishing without Licence—Freshwater Fisheries Act, 1878 (41 & 42 Vict. c. 39), s. 7—Severn Fishery District—Certificate of Secretary of State—Tributary.

By certificate of the Secretary of State, the Severn Fishery District was defined to be "so much of the river Severn and of the rivers V. and T., and of all other tributaries of the said river Severn as is situate within the counties of Gloucester, &c." The rivers V. and T. flow directly into the Severn. Licences are required for fishing in the Severn Fishery District.

On information against the respondents for fishing without a licence in a brook which was a tributary of a tributary of the river T.,—

Held, that the Justices were right in dismissing the information, because the certificate only included in the district direct tributaries of the Severn, which this brook was not.

CASE stated by Justices of Salop. This was an information preferred by the appellant, on behalf of the Board of Conservators for the Severn Fishery District, against the respondents, under the Salmon Fisheries Act, 1873 (36 & 37 Vict. c. 71), s. 22, and the Freshwater Fisheries Act 1878 (41 & 42 Vict. c. 39), s. 7, for that they did unlawfully use, in the Stoke Brook, being a place within the Severn Fishery District, certain instruments for catching trout without having a proper licence for the same.

The Justices dismissed the information.

The Severn Fishery District is defined by certificate under the hand of the Secretary of State in these terms:—

"The limits of the Fishery District of the river Severn shall be as follows: So much of the river Severn and of the rivers Vyrnaw and Teme, and of all other tributaries of the said river Severn as is situate within the counties of Gloucester, Worcester, Salop, Stafford, Montgomery, the city of Gloucester and the city of Worcester, and also so much of the estuary of the Severn as lies above a straight line drawn," &c.

It was proved that the Stoke Brook, in which the alleged offence was committed, was a tributary of the river Letwyche, which falls into the river Teme, which is the same river as that mentioned in the certificate. The river Teme falls into the river Severn.

It was proved that the Severn Board had issued a scale of licences which had been approved by the Secretary of State, and was then in force throughout the said district, and that neither of the respondents had taken out any licence. It was further proved that the respondents were using instruments for catching trout.

The question was whether the respon-

Merricks v. Cadwallader.

dents required a licence for taking trout, the brook where the trout were caught being a tributary of a tributary of the Teme.

Willis Bund, for the appellant.—The certificate must mean to include all such tributaries of the Severn and of its tributaries as are in the specified counties. It often happens that the smaller branch of a river or tributary retains the name, while the larger one bears a different name in the upper part; and unless the certificate is read as suggested, the more important streams might be excluded, and the little ones included in the district. It means to deal with all the streams in those counties which drain directly or indirectly into the Severn.

He referred to *The Queen v. Sir George Grey* (1).

No counsel appeared for the respondents.

GROVE, J.—Having regard to the words used, we cannot say that this brook was included in the district. It is said that the Fishery District of the river Severn shall consist of "so much of the river Severn and of the rivers Vyrinw and Teme, and of all other tributaries of the river Severn as are situate in the counties specified."

It seems to me that this must mean other tributaries in the same sense in which the Vyrinw and Teme are tributaries, and that the words are used in each case in the same sense. By naming two which are direct tributaries the definition is confined by these words to the inclusion of all other rivers which flow as they do directly into the Severn.

LOPES, J., concurred.

Solicitors—Helder, Roberts & Gillet, for C. W. Griffiths, Worcester, for the appellant.

1881. } THE BANBURY URBAN SANITARY
Dec. 19. } AUTHORITY v. PAGE.

Public Health Act, 1875, s. 47—Nuisance—Not Injurious to Health.

Section 47 of the Public Health Act, 1875, enacts that "any person who in any urban district keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person," shall be liable to a penalty:—Held, that it is not necessary that the nuisance should be injurious to health in order to constitute an offence under this section.

CASE stated by Justices under 20 & 21 Vict. c. 43.

The respondent was summoned, under the Public Health Act, 1875 (1), s. 47, for keeping swine so as to occasion a nuisance.

On proof of the facts relied on by the appellants to constitute a nuisance, the magistrates refused to convict on the ground that it had not been proved that the nuisance was injurious to health.

From this decision appeal was now brought.

Jelf, Q.C. (Glen with him), for the appellants, contended that it need not be proved that the nuisance was injurious to health, and cited *The Queen v. White* (2), *The Great Western Railway Company v. Bishop* (3) and *The Malton Board of Health v. The Malton Manure Company* (4).

The respondent did not appear.

GROVE, J.—In my judgment this is a special provision directed to the nuisance which would be occasioned by keeping swine in a dwelling-house, or keeping them in any improper manner. It is followed

(1) 38 & 39 Vict. c. 55. s. 47: "Any person who in any urban district (1) keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person, shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued."

(2) 1 Burr. 333.

(3) 41 Law J. Rep. M.C. 120; Law Rep. 7 Q.B. 551.

(4) 49 Law J. Rep. M.C. 90; Law Rep. 4 Ex. D. 302.

(1) 35 Law J. Rep. M.C. 171; Law Rep. 1 Q.B. 469.

Banbury Urban Sanitary Authority v. Page.

by other sub-sections relating to acts which would create nuisances in dwelling-houses, but none of these clauses refer to any injurious effects on health. The word "nuisance" appears to me to be used in its general and popular sense, and I do not think it necessary that any injury to health should here be proved.

LOPES, J., and BOWEN, J., concurred.

Solicitor—Mackeson & Co., agents for Kilby & Mace, Banbury, for appellants.

1881. { THE METROPOLITAN BOARD
Dec. 7, 13. { OF WORKS (appellants) v.
 { STEED AND ANOTHER (re-
 { spondents).

Metropolis—New Street—Width and Openings—Street Open at only One End—Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 98.

Without the consent of the Metropolitan Board of Works, a street was laid out within the metropolis which was open at only one end:—Held, that the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 98 (enacting that no new street shall be laid out unless of the width there specified, "or unless such street shall be open at both ends"), requires the street to be both of the specified width and open at both ends, and therefore that the proposed street, although of the specified width, was contrary to the Act.

The following Case was stated, under 20 & 21 Vict. c. 43, by a metropolitan police magistrate:—

1. The respondents are builders.

2. On the 10th of January, 1881, the respondents were summoned before me, under 25 & 26 Vict. c. 102. s. 98 (1), for

(1) 25 & 26 Vict. c. 102 (The Metropolis Management Amendment Act, 1862), s. 98: "No existing road . . . being of a less width than forty feet shall be hereafter formed or laid out for building as a street for the purposes of carriage traffic unless such road . . . be widened to the full width of forty feet, . . .

that they, on or about the 10th of January, 1881, at Upper Holloway, in the parish of St. Mary, Islington, in the county of Middlesex, did lay out a street for the purpose of carriage traffic with only one entrance, contrary to the by-law of the said board and 25 & 26 Vict. c. 102.

3. The said by-law is a by-law made by the appellants on the 17th of March, 1857, under 18 & 19 Vict. c. 120. s. 202, and is as follows: "Every new street shall, unless the Metropolitan Board of Works otherwise consent in writing, have at the least two entrances to the full width of such street, and shall be open from the ground upwards."

4. The said proposed street or road extends from a point in the Holloway Road, in a westerly direction, to certain vacant ground belonging to the Tottenham and Hampstead Junction Railway, and does not communicate at the western end with any other road or approach, and there is a barrier or fence at the said western end thereof. The said street or road, and the manner in which it is proposed to be laid out, is shewn on the plan annexed hereto (2).

5. The board did not consent in writing or otherwise to the said street or road being laid out in the manner mentioned in the preceding paragraph.

6. On the part of the respondents it was

or for the purposes of foot traffic, only unless such road . . . be widened to the full width of twenty feet, . . . or unless such streets respectively shall be open at both ends from the ground upwards; and any road . . . hereafter to be formed or laid out for either of the purposes aforesaid shall be deemed to be a new street, and become subject to all the provisions of the recited Acts and this Act, and to the provisions and penalties of and under any by-laws made or to be made in pursuance thereof in relation to sewerage, draining or paving, and to width, construction, surface, inclination and other requirements and particulars."

Section 99: "Provided that it shall be lawful for the Metropolitan Board of Works to permit the formation of any such street of less width than hereinbefore provided, or with one opening only, should they under any special circumstances deem it equitable and expedient so to do."

(2) The plan shewed, besides the above facts, that the proposed road was forty feet wide, and had houses on each side.

Metropolitan Board of Works v. Stead.

contended—firstly, that section 98 had been complied with, and that the said section does not require that there shall be two entrances to roads in the metropolis; secondly, that the aforesaid by-law is repugnant to the laws of England; and, thirdly, that the said by-law was bad, as being restrictive of trade.

I dismissed the summons subject to this Case.

The question for the opinion of the Court is whether the above decision was correct.

Biron, for the appellants (on Dec. 7).—The question is as to the liberty of a building owner within the metropolis to make, without the consent of the appellants, a street not having an entrance at each end, or, in other words, a *cul-de-sac*, and arises under section 98 of the Metropolis Management Amendment Act, 1862 (1), which has already been held in *The Queen v. Baker* (3) to extend to a newly formed road, as if it said “no new street shall be formed,” &c.

The section, rightly read, requires that the street shall be of the width there specified and also open at both ends. The word “or,” before the words “unless such streets respectively shall be open at both ends,” must be read “and.” If it were not so read the provision as to width, which is introduced for sanitary reasons, might be wholly disregarded in the case of any street open at both ends. The appellants further rely on the by-law set out in paragraph 3 of the Case. The by-law was not *ultra vires*.

He referred also to the interpretations of “street” and “new street” in 18 & 19 Vict. c. 120. s. 250, and 25 & 26 Vict. c. 102. s. 112.

Poland, for the respondents.—The section (1) does not require streets of the width of forty feet to be open at both ends. Its objects are sanitary, and enough air is secured by the prescribed width. *The Vestry of St. Mary, Islington, v. Barrett* (4) shews that the Metropolis Management Acts generally have sanitary objects largely

in view. The by-law saying nothing about the width, the Legislature in this enactment (passed in substitution, as we contend, for the by-law) put “width of forty feet” and “open at both ends” as alternative requirements.

Biron, in reply.

GROVE, J. (on Dec. 13).—In this case, at the conclusion of the arguments, we were disposed to think that it had better be re-argued before three Judges, my brother Lopes and myself being then inclined to differ. Since then, however, we find that we both take the same view of the case, and therefore we now proceed to give judgment.

The point is a very short one. It arises on a Case stated by a magistrate; and the main question before us, and the one which will decide the case according to the view which we now take, is, What is the meaning to be attributed to section 98 of 25 & 26 Vict. c. 102—I may say to a single word in that section, and that is the word “or.” The question is whether that word “or” is used in the disjunctive or conjunctive, or (to express the question somewhat differently) whether the word is used as either “and” or “nor.” As I put it on the hearing of the argument, it seems to me that it was intended to mean “and” or “nor”—that is to say, that the two things comprehended in the prohibition were to be both prohibited and not in the alternative.

The section (1) runs thus—[The learned Judge read it].

The question is, What meaning ought we to attribute to the word “or” preceding the words “unless such streets respectively shall be open at both ends from the ground upwards.” It is true that it would be better, and more strictly grammatical, assuming the sense which I attribute to the words to be right, if “nor” had been written instead of “or,” or if the negative had been continued with the conjunctive word “and.” But it seems to me that the real sense of the whole passage is that the road must be of the width specified, and open at both ends. That seems to me to be the very object of the statute, which was passed for sanitary purposes

(3) 34 J.P. 823.

(4) 43 Law J. Rep. M.C. 85; Law Rep. 9 Q.B. 278.

Metropolitan Board of Works v. Steed.

and for the purpose of comfort and the use of traffic.

The argument on the part of the respondent in favour of reading "or" disjunctively was, I think, rather far-fetched. It was suggested that, whereas the by-law said nothing about width, the Legislature in this enactment inserted the provision as to width as an alternative provision, because, with a carriage-road of the width of forty feet, or a foot-road of the width of twenty feet, there would be sufficient ventilation, drainage, &c. But if the word "or" were to be read disjunctively it would follow that a street (whether a carriage-road or a foot-road) might be of any width, however narrow—for instance, one and a-half feet or two feet wide—provided such street were open at both ends. And a very long narrow street would hardly be more salubrious with both ends open than if one end were closed and it were a *cul-de-sac*. It seems to me to be straining the plain object of the Act to suppose that that was the reason.

I think we are not doing in this case what we have often refused to do, namely, to construe an Act against the meaning of the words where the meaning of the words is not at all repugnant to the purpose of the Act, or manifestly absurd; we are construing the Act according to an ordinary use of language, although it may not be strictly grammatical.

It appears to me that the clear intention of the Act was to have streets of a proper width and open at both ends, and that there should not be the incommodious and unhealthy cross streets which are called *culs-de-sac* and which are shut up at one end.

There are some other passages in the Act which might be referred to—but I will not go through them—in which I should also think the word "or" was used in the same sense as we here give to it—a sense which has often been judicially given to it. I think the statute requires the streets with which it deals to be of the width prescribed and also open at both ends.

That being my opinion upon the construction of the statute, I need not consider any question arising upon the by-

law. I think that our judgment should be for the appellants.

LOPES, J.—The question in this case is whether, according to the true construction of this 98th section, the Legislature intended that carriage-roads and footways within that section were to be of a certain specified width and open at both ends, or whether the Legislature intended that it should be sufficient if they were either of the specified width or open at both ends. I entertained for some time considerable doubt as to what the true meaning of the Legislature was. I was inclined to think we ought to adopt the strict grammatical meaning of the words used, and ought to hold that if the street (whether carriage road or footway) was either of the specified width or open at both ends, that would satisfy the provisions of the section. I do not want to enter into any dissertation upon grammar; but I do not think anybody would doubt but that if the Legislature intended to express that which we now think it did intend, it would have used much more apt and more strictly grammatical terms if it had written either "nor" or "and." Mr. Biron, at the very commencement of his argument, so admitted. However, I have now carefully looked through the different sections of the Act, and also considered carefully what would be the more reasonable interpretation of the section, and I agree with my brother Grove that the Legislature did intend that there were to be two conditions attached to the laying out of the carriage-road or footway under this section—namely, that it must be of the width specified in the section and it must also be open at both ends. I think, therefore, that the magistrate was wrong and that this Case should be remitted to him.

Judgment for the appellants.

Solicitors—R. Ward, for appellants; A. O. Underwood, for respondents.

1882. } GRAFF (*appellant*) v. EVANS
Feb. 28. } (*respondent*).

Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3—Sale of Intoxicating Liquor by Retail without Licence—Club.

A member of an ordinary club, acting on his rights as a member, obtained from the club, on payment, some beer and spirits:—Held, that this was not a sale by retail of intoxicating liquor within the meaning of the Licensing Act, 1872, s. 3.

CASE stated, under 20 & 21 Vict. c. 43, by a Metropolitan Police Magistrate.

The respondent preferred against the appellant, under the Licensing Act, 1872, s. 3 (1), a complaint that the appellant, on the 4th of May, 1881, unlawfully sold and exposed for sale by retail certain intoxicating liquor, without being duly licensed to sell the same.

The Grosvenor Club is a *bona fide* club properly constituted. Trustees of the club property are appointed, and there is a managing committee to conduct the general business of the club. The appellant was the manager, acting for the committee. There are about 1,100 members of the club, who pay an entrance fee and periodical subscriptions. The objects of the club are social intercourse, mental and moral improvement, and rational recreation. The members can obtain food and refreshments in the club, and also wine, beer and spirits, on payment. The produce of such sales goes to the funds of the club. The club has no licence to sell.

Mr. James Foster, a member of the club, purchased, on the 4th of May, 1881, at the bar of the club, a bottle of whiskey and a bottle of pale ale, and paid 3s. 11d. for the two. The barman wrapped them up in paper, and Foster carried them out of the club openly.

(1) The Licensing Act, 1872 (35 & 36 Vict. c. 94), s. 3: "No person shall sell or expose for sale by retail any intoxicating liquor without being duly licensed to sell the same, or at any place where he is not authorised by his licence to sell the same. . . ."

Section 74: "In this Act, if not inconsistent with the context . . . 'licence' means a licence . . . granted by justices in pursuance of the Intoxicating Liquor Licensing Act, 1828" [which by the same section means 9 Geo. 4. c. 61, and the Acts amending the same].

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Liquor to the value of 200*l.* is sold annually to the members for consumption off the premises, and there is a profit on such sales to the amount of thirty-three per cent. on the original cost.

It was contended on the appellant's part that the facts did not amount to a sale of the whiskey and ale within the meaning of the Licensing Act, 1872, s. 3 (1), the sale being to a member of the club; that liquor could be sold to members for consumption either on or off the premises, and one object of the promoters of the club was to enable members to buy for consumption off the premises; that the members were partners in the club property, and therefore the member was only buying his own.

On the part of the respondent it was contended that the club property was vested in the trustees under the rules of the club (2), and the members of the club were not co-partners, and also that the club was not legally entitled to sell liquors to be consumed either on or off the premises.

It appeared to the magistrate that an ordinary club, such as the Grosvenor Club, was not a partnership in the legal sense, though the members of it might be joint owners; and that the sale, having been for carrying off the premises and at a price beyond the cost price, was a sale within the meaning of the Act (1); although if the price charged had been only the strict cost to the club, it would not have been a sale within the meaning of the Act, but would only have been a mode of subdivision among the members, and the committee would only have been the agent of the members to purchase, and the member would only have been repaying his agent the cost price. The magistrate, therefore, convicted the appellant.

The question for the opinion of the Court was, whether the sale of whiskey and ale to Foster was a sale of intoxicating liquor by retail within the meaning of section 3 of the Licensing Act, 1872, requiring the seller to be duly licensed.

Sir F. Herschell, Q.C. (Solicitor-General)

(2) The rules were annexed to the case. Rule 7: "All property acquired by the club shall be vested in the trustees."

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(*A. L. Smith*, with him), for the appellant.—If a licence is necessary for selling liquor, as in this case, to a member of a club for consumption off the premises, it must, still more clearly, be necessary where the sale is for consumption on the premises; and therefore, if this conviction was right, clubs in general are subject to the Licensing Acts, although they have never been considered so to be. There is no ground for holding that a licence was necessary in this case. No licence could have been granted for the purposes for which the respondent contends a licence was necessary. Justices' licences cannot be granted in respect of any premises other than places of public resort. Further, there was no sale within the meaning of the Act (1). The Act means by selling by retail, selling by retail to any one wanting to buy; and in the present case there was no selling in the true sense, still less any selling to a member of the public at large. There was merely a supplying of a member of the club, in pursuance of the rules of the club, with liquor, at prices fixed under the rules, and that did not constitute a sale.

He referred to 9 Geo. 4. c. 61. s. 37, 1 Wm. 4. c. 64. s. 2, and *The Queen v. Wilkinson* (3).

Staveley Hill, Q.C. (*Sir H. Giffard, Q.C.*, and *Bremner*, with him), for the respondent.—There was a sale by retail of the liquor within the meaning of the Act. There were all the necessary elements of a sale. There was a transfer to Foster of the absolute property in the liquor for a price in money. It may be that no action for goods sold and delivered, or goods bargained and sold, would lie against one of joint owners buying of his co-owners; but, all the property of the club being by the rules of the club vested in the trustees, no difficulty by reason of joint ownership arises.

[FIELD, J.—How can a trustee, handing over property to a *cestui que trust* in execution of the trust, be considered to sell to the *cestui que trust* ?]

Sir F. Herschell was heard in reply.

FIELD, J.—The question submitted to us is, whether the sale of whiskey and ale to Foster was a sale of intoxicating liquor by

retail within the meaning of the Licensing Act, 1872, s. 3 (1). I have come to the conclusion that the question must be answered in the negative, reading (as we must) the question as meaning whether, according to the facts found in the case, there was in the so-called sale to Foster a sale within the Act.

The appellant is the manager of the Grosvenor Club. By the rules of the club the club property is vested in trustees. There is a committee of management, for whom the manager acts. The members can obtain on payment food and refreshments, including wine, beer and spirits. Liquor is sold to members for consumption off the premises to an amount annually of about 200*l.*; and there is a profit on such sales to the amount of thirty-three per cent. on the original cost, which however is not trade profit, since the expense incurred by the club in keeping the liquor and in distributing it among the members would have to be added to the original cost before arriving at trade profit. The learned magistrate says it appeared to him that the club was not a partnership in the legal sense, though the members might be joint owners; and I think that that was a right conclusion. The members were not partners; but they were joint owners, although the trustees had a special possession. The magistrate further thought that the allowing a member to have liquor for consumption off the premises, the price charged being more than the cost price to the club, amounted to a sale within the meaning of the Act; although if no profit were made by the club, the transaction, in his opinion, would not be a sale within the Act, but would only be a mode of sub-division among the members, the committee being then only the agent of the members to purchase, and the member merely repaying his agent. I cannot agree with the learned magistrate in thinking it material that the price charged by the club was more than the cost price to the club; as to which I have already remarked that the cost price would not by any means include all expense to the club in connection with the liquor.

In order to find the meaning of the Legislature, we must look both to its object, broadly considered, and to the particular character of the provisions enacted. Now,

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the Legislature has limited its requirement of a licence to sale. A gift of liquor, as on the coming of age of an eldest son, however much it may be within the mischief of the Act, is not within the Act. Further, there must be a sale "by retail." Did, then, the appellant sell liquor by retail to Foster? He delivered the liquor to Foster, but did he sell the liquor by retail to Foster? I think he did not. There was no bargaining; neither the appellant nor Foster nor any one else supposed himself to be concerned in any contract; Foster was simply acting on his rights as member. I think there was a transfer of property, but no sale. I am, therefore, of opinion that the determination of the magistrate must be reversed.

HUDDLESTON, B.—I am of the same opinion. The question is one of considerable importance. I agree with the Solicitor-General that if a sale of intoxicating liquor to a member of a club for consumption off the premises requires a licence, a licence is equally requisite in the case of a sale for consumption on the premises; and if we uphold the decision of the magistrate every ordinary club has made itself liable to penalties. It would be strange if that were the law, the framers of the licensing legislation never having, since the passing of 9 Geo. 4. c. 61, until now, found it out. But, strange as the conclusion would be, we have to see whether the law does so stand.

I am of opinion that there has been in this case no sale. Before the handing over of the liquor by the barman to Foster, Foster, as one of 1,100 members, was already interested in the liquor to the extent of 1-1100th; he obtained only the remaining interest; contrary, therefore, to the contention on the part of the respondent, there was no transfer to him of any absolute or general interest—only a transfer of a partial interest. But looking at the matter more broadly, and looking at the object of the Act, I arrive equally at the conclusion that there has been no sale by retail within the meaning of the Act.

Judgment for the appellant.

Solicitors—Lewis & Lewis, for appellant; A. J. Bristow, for respondent.

1881. { THE QUEEN (on the prosecution
Dec. 17. { of the East Ham Local
Board) v. BARCLAY AND
ANOTHER.*

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211—General District Rate—Compulsory Rating of Owners—Powers of Urban Authority—Unoccupied Houses—Reduced Assessment—Discretion of Rating Authority.

The Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, after enacting that an owner of premises who is rated instead of the occupier for general district rates shall be entitled to be assessed at a reduced estimate in respect thereof, not being less than two-thirds nor more than four-fifths of the net annual value, provides that where such reduced estimate is in respect of tenements, whether occupied or unoccupied, then such assessment "may" be made on one-half of the amount at which such tenements would be liable to be rated if then occupied and the rate were levied on the occupiers:—Held, that the word "may" must be construed as meaning "shall," and that the power given to an urban authority to rate an owner, without his consent, in respect of premises whether occupied or unoccupied, could only be exercised subject to the obligation of making the assessment at the specified reduction of one-half of the rateable value of such premises.

This was a rule calling upon two Justices for Essex to shew cause why a *mandamus* should not issue commanding them to issue a distress warrant against the goods of Richard Weaver, under the following circumstances:—

In March, 1879, a resolution was passed by the Local Board of East Ham, the urban authority, that owners of property let at weekly tenancies should be rated instead of occupiers in respect of a rate made by the board for general district purposes under the Public Health Act, 1875, whether the premises were occupied or unoccupied, and that such premises should be rated at two-thirds of their annual value.

* Affirmed by the Court of Appeal on the 15th of March, 1882.

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On the 9th of November, 1880, Weaver was, in pursuance of this resolution, rated to a general district rate in respect of twenty-seven cottages, of which he was owner, let upon weekly tenancies. At that time twenty of these cottages were unoccupied, and so continued up to the time of the hearing of the summons, which was subsequently taken out, calling upon him to shew cause why a distress warrant should not issue in respect of the arrears due from him. The Justices, having heard the summons, made an order in respect of the occupied houses only, but refused to make any order in respect of the houses which were unoccupied, being of opinion that section 211 of the Public Health Act, 1875, did not enable the local board, if they rated tenements whether occupied or unoccupied, in their discretion, to assess them at two-thirds of their annual value (1).

(1) By the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211, sub-s. 1, it is enacted that "with respect to the assessment and levying of general district rates under this Act, the following provisions shall have effect—namely, (1) general district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions, regulations and conditions: namely, (a) the owner instead of the occupier may at the option of the urban authority be rated in cases where the rateable value of any premises liable to assessment under this Act does not exceed the sum of 10*l.*, or where any premises so liable are let to weekly or monthly tenants, or where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly. Provided, that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate, as the urban authority deem reasonable, of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers." Section 2 provides that "if at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be

Mr. Weaver appeared, in person, to shew cause, but was stopped by the Court.

Tindal Atkinson (Grubbe with him) supported the rule.—The decision at which the Justices arrived cannot be supported. The authority are not bound to make the assessment upon one-half of the rateable value. The words are, "such assessment may be made"; the local board have clearly, therefore, a discretion in the matter. The whole of the proviso should be read together; in the first part there is a discretion given between two-thirds and four-fifths, but the discretion is extended, so far as regards unoccupied houses, down to one-half.

FIELD, J.—It is unnecessary for us to hear Mr. Weaver, though the language of the statute is not as clear as might be wished. The question arises in this way. The necessary substratum of rateability, ever since the time of Queen Elizabeth downwards in every Act of Parliament, or any power by which the subject is taxed, has almost universally been occupation. The man who has the fruits of the earth and the occupation of the house, and has to pay to the landlord the sum which the occupation deserves, is the man at whom the Legislature, as a general rule, first stops and demands means which are wanted for public purposes. It is only in modern times that the Legislature—seeing that large quantities of comparatively small houses are occupied to a very great extent by persons of no great means, who are likely to change very rapidly as well as to occupy portions of houses only, and upon whom therefore the rates are to some extent uncertain—has thought proper to empower the rating authorities, if they included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied, and if any such premises are afterwards occupied during any part of the period for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made."

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choose, to rate the owner instead of the occupier. Now it is very important to read the language of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), and to compare it with the language of the present Act. There is no reason to suppose that the Legislature intended to rate the occupier under the Public Health Act upon any different principle than the occupier or owner under the Poor Law Act; on the contrary, the two statutes are in that respect in *pari materia*, the basis of liability under the former Act being the occupation of property for the time being assessable to the poor-rate. The general rule, therefore, is that nobody is assessable to a district rate unless he has such an occupation as would have rendered him assessable to the poor-rate—see *Hodgson v. The Local Board of Carlisle* (2).

Now by the 4th section of the Poor Rate Assessment and Collection Act, it is provided that “the vestry of a parish may from time to time order that the owner shall be rated to the poor-rate instead of the occupier”; and an absolute power is thus given to the vestry to order the owners to be rated. But it seems, with reason, to have been thought fair, where the owner is thus made liable, that some reduction should be made in his favour, and accordingly it is also made imperative that the owner if rated shall be allowed a reduction of fifteen per cent. on the amount of the rate; and the section goes on to provide that, if the owner shall give notice that he is willing to be rated, whether the premises be occupied or not, then he shall be rated accordingly, and shall be allowed in that case a further deduction equal to the previous deduction of fifteen per cent. Of course the law at that time, as now, was that, in the absence of any such clause of rating, premises which were unoccupied could not be the subject of a rate. The Legislature saw that difficulty, and inserted a clause for the purpose of correcting it; for by section 16 of 32 & 33 Vict. c. 41, it is provided that if the occupier assessed in the rate when made shall cease to occupy before the rate is wholly discharged, or if

the hereditament being unoccupied at the time of the making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate-book the name of the person who succeeds or comes into the occupation, as the case may be, and so on, and rate him during the remainder of the term. That, therefore, was the state of the law with regard to the poor-rate. The question we have to decide here turns on the true construction to be given to the 211th section of the Public Health Act, 1875, and has reference to the assessment and levying of district rates. It is well known that under that Act there are various rates, but there is one general district rate which is applicable for expenses and management and other things of that kind. The section says that “General district rates shall be made and levied on the occupier of all kinds of property, by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act.” Then it is provided that, “where the owner is rated instead of the occupier, he shall be assessed in such reduced estimate, as the urban authority deem reasonable, of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers.” So far as the first paragraph of the proviso is concerned this legislation is analogous to that with regard to the poor-rate. The language is positive; it is that the authority may in their discretion rate the owner, but if so the owner “shall” be rated on a reduced estimate, fixed within nearly the same limits.

I pass over for the present the second paragraph of the proviso, and proceed to the second sub-section, which provides that, “if at the time of making any general dis-

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strict rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied." Now I think that this sub-section applies as well to owners rated as to occupiers, for there are no words narrowing the effect of this part of the sub-section so as to exclude the case of owners. So that so far the result is that only occupied premises are the subject of rating, even when the owner may be rated; and in consideration of the advantage to the district arising from the greater certainty and convenience of collection, the owner in such case is to have a reduction of between one-third and one-fifth of the rate.

But in order to decide the present case I must now go back to the provision upon which it more particularly turns. A new power is given, by the second portion of the proviso to section 211, sub-section 1 (a), which never existed before, and which enables the rating authority, whether the owner will or no, to rate the owner whether the premises are occupied or unoccupied, and so to alter one of the elementary conditions of rateability, namely, the necessity for occupation. Under the Poor Law Act it was only by the owner's consent that he could be rated on unoccupied property; but the owner's will is eliminated here, and the matter is placed in the discretion of the rating authority, it being left to them to say whether they will take advantage of the power that they may rate the premises whether occupied or unoccupied. It seems clear to me that when this second portion of the proviso applies, the second sub-section, to which I have referred, does not apply; for the proviso gives to the owner a further reduction in the case of the assessment of the premises, whether occupied or unoccupied, and therefore it cannot be that the owner so assessed is to be exempt altogether from the reduced assessment while the premises are unoccupied, or he would be getting a double benefit.

But then come the words which create a difficulty, because the proviso proceeds to say that such assessment "may" be made on one-half of the amount at which

such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers; and it seems to be reasonably clear that the Legislature intended that the owner should receive some further benefit if he was called upon to pay the rate whether he was receiving rent from the property or not. It was, indeed, argued on behalf of the authority that though the provision as against the owner is compulsory, and enables the authority to make the owner liable against his will to pay rates on the premises whether occupied or unoccupied, it is only discretionary on the part of the authority whether they will make him any further reduction or not. But this construction would involve the to me apparently unreasonable result—namely, that an owner who was rated under the general law would have his remedy under sub-section 2, and, if the premises were unoccupied, would be rated at four-fifths at the most, whilst a man who, at the discretion of the authority, was rated for premises whether occupied or unoccupied, might be rated at four-fifths also, and so gain no benefit by the extension of his liability. It does not seem to me reasonable to suppose that the Legislature intended to give an alternative so disadvantageous to the owner. In the enactments relating to the poor-rate, the Legislature gives a further benefit to the owner when he consents to be rated on property whether occupied or unoccupied, which may be equal in amount to the reduction of fifteen per cent. already provided for, and it seems to me that that legislation tends to shew that it was intended here that the owner should have a further reduction, if deprived of the exemption of unoccupied property for the advantage and convenience of those levying the rate. That seems to me to be the reason and justice of the thing.

It was pointed out by Mr. Tindal Atkinson that the word "shall" is used in the former part of the section, and in the Poor Law Act of 1869, where it is intended that a thing shall be compulsory, and it was argued that the word "may" is *prima facie* permissive. That is no doubt an argument of some weight, but I do not think it is conclusive. The word "may" is capable of different

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constructions, and has, in certain cases, been construed as meaning "must," and the true rule, as laid down in the case of *The Queen v. The Bishop of Oxford* (3), is that the context and the surrounding circumstances must be looked at in order to see what in the particular case the construction should be. In the case before us there is an alteration of the general law as to rating; for before the second part of this proviso became law the rating authority could not, without the owner's consent, have rated him in respect of unoccupied premises. They had no power to do so except by virtue of a contract with him to that effect. Now for the first time an absolute power of doing so is given to them. It seems to me that the reasonable view is that they were given this power subject to the obligation of making the specified reduction in the amount of the rate. The whole system of legislation on the subject appears to me to shew that the word "may" must be here construed as meaning "shall." It is a very well established rule for the construction of statutes that, if they impose a charge on the subject, they must be strictly construed as against the party in whose favour the charge is imposed. The conclusion at which I arrive is that the contention of Mr. Weaver is well founded, and that the rule for the *mandamus* must be discharged.

CAVE, J.—I do not know that I have occasion to add anything to the judgment already given. Looking at the words of this section I am unable to construe them in any other way than that which my brother Field has done. With reference to the point suggested that this was a matter for appeal, and not an objection to be taken before the magistrates, it is not necessary to express an opinion upon that, but I have at the present moment a strong opinion that the matter can be raised before the magistrates, inasmuch as it goes to the right to rate altogether.

Rule discharged.

Solicitors—Wilson & Son, for the prosecution.

(3) 48 Law J. Rep. Q.B. 609; Law Rep. 4 Q.B. D. 246, 525.

1881. { THE QUEEN v. EATON AND
Dec. 16, 20. { OTHERS, JUSTICES OF THE
COUNTY OF NORTHAMPTON.

Elementary Education—Jurisdiction of Justices over Offences under By-laws—Attendance Order—Petty Sessional District comprising Parts of several Counties—Union extending into several distinct Jurisdictions—30 & 31 Vict. c. 106 (Poor Law Amendment Act, 1867), s. 27—39 & 40 Vict. c. 79 (Elementary Education Act, 1876), ss. 12 and 34.

By section 34 of the *Elementary Education Act, 1876*, it is enacted that "all enactments relating to guardians and their officers and expenses and to relief given by guardians shall, subject to the express provisions of this Act, apply as if the guardians, including the School Attendance Committee appointed by them and their officers acting under this Act, and expenses incurred and money paid for school fees and relief given under this Act, were respectively acting, incurred and paid and given as relief under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders and regulations accordingly." Therefore, in cases where a union extends into several distinct jurisdictions, as specified in 30 & 31 Vict. c. 106. s. 27 (*Poor Law Amendment Act, 1867*), Justices of any of the counties forming such jurisdictions are enabled to hear and determine applications against parents for non-compliance with attendance orders or for other breaches of the by-laws under the *Elementary Education Acts*.

This was a rule for a *mandamus* to certain Justices of the county of Northampton to issue summonses against J. Sharpe and Mary Marriott for a breach of the by-laws made under the *Elementary Education Act*. The application had been made by the School Attendance Committee of the Stamford Union to two Justices of Northamptonshire in petty sessions at Stamford, and the alleged offence was in not compelling a boy, the son of John Sharpe, being under thirteen and not within the exemption, to attend school. Both Sharpe and Marriott lived at a place in the county of Rutland, within the

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Stamford Union. That union comprises also a part of the county of Northampton, and the Justices sitting in petty sessions at Stamford have jurisdiction over such part. The Justices declined to act, on the ground that they had no jurisdiction under the Elementary Education Acts except in cases arising in their own county of Northampton.

W. Y. Clare, having obtained a rule *nisi*, now argued in support, no counsel appearing for the Justices.

The further facts and arguments appear fully in the judgment of the Court.

Cur. adv. vult.

The judgment of the Court was delivered (on Dec. 20) by Field, J.

FIELD, J.—A rule *nisi* has been granted, calling upon two of the Justices of Northamptonshire to shew cause why they should not proceed to hear and determine an application on behalf of the School Attendance Committee of the Stamford Union, for a summons against John Sharpe, and also on motion of the same applicant against Mary Marriott. Both Sharpe and Marriott resided in the parish of Ryhall, in the county of Rutland, but within the Union of Stamford, which union also comprises a part of the county of Northampton, within which the Justices had jurisdiction in petty sessions at Stamford.

The proceedings against Sharpe were for a breach of the by-laws made under section 74 of the Elementary Education Act of 1870, as amended by the Acts of 1876 and 1880, for, amongst other places, the parish of Ryhall; and the application against him was made under section 12 of the Act of 1876, by which, when an attendance order is not complied with without any reasonable excuse, a Court of summary jurisdiction may, on complaint made by the authority, make such order as they think fit within the limits imposed by the statute. And the proceedings against Mary Marriott were made, so far as the question we have to decide, under similar circumstances.

It will have been observed that, although the defendants in both cases committed

the breaches complained of within the county of Rutland, the application was made to the Justices in petty sessions in the county of Northampton; and the Justices to whom the application was made, having been advised that they had no jurisdiction in cases under the Elementary Education Act of 1876, except in cases arising in their own county, declined to issue the summons. There is, of course, no doubt that primarily the limits of the commission of Justices are also those of their jurisdiction, and that it lies upon any one who asks them to act elsewhere to shew some statutory authority so to do.

In the present case the School Attendance Committee of the union, whose duty it is to enforce the by-laws and the provisions respecting the employment of children, relied upon section 34 of the Act of 1876 as giving that jurisdiction. By that section, "all enactments relating to guardians and their officers and expenses, and to relief given by guardians, shall, subject to the provisions of this Act, apply as if the guardians, including the School Attendance Committee, were acting under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders and regulations accordingly."

It is impossible to exaggerate the inconvenience of this mode of legislation. Instead of the Legislature referring specially to any previous Acts or sections of Acts which it proposes to incorporate in this section, the only incorporation is that of "all enactments" relating to guardians, rendering it necessary therefore for any tribunal required to construe the Act to search through every Act of Parliament in which guardians are referred to, to see whether any particular enactment can be found bearing upon the matter in hand; and inasmuch as in this very Act there is a set of clauses expressly referring to "legal proceedings," I am not at all surprised that the Justices in the present case, finding no extension of the jurisdiction in those clauses, conceived that it had not been given to them.

In order, however, to make out that a Rutland jurisdiction had been conferred on the Northamptonshire Justices, we were referred, on behalf of the School

The Queen v. Eaton.

Attendance Committee, to 30 & 31 Vict. c. 106. s. 27, by which it is enacted that "where any union extends into several distinct jurisdictions, every matter, act, charge or complaint by which the guardians are affected or in which they have any interest, shall, for the purpose of jurisdiction, be deemed to arise or exist equally throughout the union"; and I think it must be taken that if that clause is to be read into section 34 of the Elementary Education Act, and if, when so read in, section 27 applies to the present case, the Justices of Northamptonshire would have jurisdiction although the matter of the complaint arose in Rutland, the marginal note to section 27 pointing out as it does that the enactment is intended specifically to relate to "jurisdiction of Justices in union."

Let us then see whether section 27 of the 30 & 31 Vict. is made applicable to the enforcement of by-laws made under the provisions of the Elementary Education Acts. The authority enforcing them is the School Attendance Committee, who are expressly mentioned in section 34; they are "acting" under that Act, and the section says that "all enactments relating to guardians" shall apply as if the School Attendance Committee were acting under the Acts relating to the relief of the poor. The 30 & 31 Vict. c. 106, is undoubtedly one of those Acts; and as the Stamford Union extends into the county of Northampton, I think that the matter complained of here, although actually arising within the county of Rutland, must be deemed to have arisen equally in Northamptonshire, into which the union extends, and so within the jurisdiction of the Northamptonshire Justices.

There are many instances of similar legislation. For an offence committed in a workhouse a Justice may commit to the gaol of the county in which the parish is situate to which the pauper is chargeable (7 & 8 Vict. c. 101. s. 57), notwithstanding that the Justices are not Justices of that county—see 11 & 12 Vict. c. 110. s. 9. In like manner, under the various Public Works Consolidation Acts, if a question arise relating to lands not wholly in one jurisdiction, they may be decided by a Justice in any county in which any

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part of such land is situated, and an offence against the Salmon Fishery Acts committed in a river, the boundary of two counties, is cognisable by any Justice of either of them.

The result, therefore, is that the Justices have jurisdiction in these cases, and must proceed. We make the rules absolute.

Rule absolute.

Solicitors—Joseph Mote & Son, for applicant.

1881. { THE GUARDIANS OF THE POOR
Dec. 19. { OF SUNDERLAND (*appellants*)
 { v. THE CLERK OF THE PEACE
 { OF THE COUNTY OF SUSSEX
 { (*respondent*).

Poor Law—Settlement by Residence—Removal to Parish in the same Union—39 & 40 Vict. c. 61. s. 34.

The 34th section of 39 & 40 Vict. c. 61 enacts that "where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years as would, in accordance with the statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise:—Held, that a person who had resided in a parish for a term of three years, but had removed before the passing of the Act, did not acquire a settlement therein, notwithstanding that he continued to reside in the same union, but in another parish, until after the passing of the Act.

The Queen v. The Ipswich Union (46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 269) and The Guardians of Plumsgate Union v. The Guardians of West Ham Union (50 Law J. Rep. M.C. 51; Law Rep. 6 Q.B. D. 576) followed.

CASE stated by consent under Baines's Act (12 & 13 Vict. c. 45) by way of appeal from the order of the Justices of the peace

F

Guardians of Sunderland v. Clerk of the Peace of Sussex.

for the county of Sussex, whereby they adjudged that one Philip King was legally settled in the parish of Sunderland, in the Sunderland Union, in the county of Durham, and ordered the guardians of the poor of that union to pay the Governor of Her Majesty's prison at Lewes, in the county of Sussex, the sum of 3*l.* 3*s.* as the reasonable charges for enquiring into the insanity of Philip King, and for conveying him to the County Lunatic Asylum at Hayward's Heath, and also to pay to the treasurer of the asylum the weekly sum of 14*s.* for his maintenance in the asylum until it should be otherwise ordered according to law.

The order was based upon the birth settlement of Philip King in a parish in the Sunderland Union in 1856, and it was agreed that the order was to be confirmed unless the facts hereinafter stated shew that he was legally settled elsewhere.

In July, 1864, Philip King went to reside in the parish or township of Stockton-upon-Tees, in the county of Durham and in the Stockton Union, and continued to reside there during the term of three years and more—namely, until the month of July, 1870, in such manner and under such circumstances in each of such years as, in accordance with the several statutes in that behalf, would have rendered him irremovable.

In July, 1870, Philip King went to reside in the parish or township of Middlesborough, in the county of York, which then formed part of the said Stockton Union, and there resided continuously until the month of December, 1872, when he enlisted in Her Majesty's army.

Seven days after he enlisted he bought his discharge from the army, and immediately thereupon returned to Middlesborough, and resided therein continuously from that time until the month of March, 1873, when he again enlisted in Her Majesty's army, in which he served until the month of July, 1878.

In July, 1878, he was discharged from the army, and immediately thereupon went to reside in Stockton-upon-Tees, and there resided continuously until the month of November, 1878, when he again enlisted in Her Majesty's army, in which he served until the 1st day of July, 1880.

On the 1st day of July, 1880, at a dis-

trict court-martial holden at Shorncliffe camp, he was found guilty of certain offences and sentenced to 336 days' imprisonment with hard labour, and to be dismissed from Her Majesty's service with ignominy.

On the 31st of December, 1880, while undergoing his term of imprisonment in Her Majesty's prison at Lewes, he was certified to be insane, and on the 11th day of January, 1881, was received into the asylum at Hayward's Heath, in pursuance of a warrant of the Secretary of State, where he was still confined.

By an order of the Local Government Board, dated the 1st day of June, 1875, the parish or township of Middlesborough was separated from the Stockton Union, and together with certain other townships or parishes formed into a separate union under the name of the Middlesborough Union.

The question for the opinion of the Court was, whether Philip King was settled in the parish or township of Stockton-upon-Tees.

A. Glen, for the appellants.—The pauper has acquired a settlement, under 39 & 40 Vict. c. 61. s. 34, by reason of his three years' residence in Stockton previous to 1870. *The Queen v. The Ipswich Union* (1) no doubt decides that a three years' residence broken before the passing of the Act does not confer a settlement, but the ground of the decision was that the *status* of irremovability had ceased to exist before the passing of the Act. In the present case the *status* of irremovability continued, because the residence in Middlesborough, a township in the same union, is for the purpose of irremovability the same as a residence in Stockton—24 & 25 Vict. c. 55. s. 1. The period during which the pauper served in the army is excluded from computation—9 & 10 Vict. c. 66. s. 1.; *The Queen v. Hartfield* (2). The present case is governed by *The Brampton Union v. Carlisle Union* (3), where a three years' residence in a parish,

(1) 46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 269.

(2) 17 Q.B. Rep. 746; 21 Law J. Rep. M.C. 65.

(3) 47 Law J. Rep. M.C. 114; Law Rep. 8 Q.B. D. 479.

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completed before the passing of the Act, was held to confer a settlement, notwithstanding that the pauper was in receipt of parish relief subsequent to the three years. It was held that, inasmuch as he had completed the term of three years' residence in the parish before he became in receipt of relief, and had continued to reside in the union until the passing of the Act, he had acquired a settlement. The decision in *The Queen v. The Ipswich Union* (1) is inconsistent with *The Queen v. The Brompton Union* (3) and *The Guardians of Westbury-on-Severn Union v. The Overseers of Barrow-in-Furness* (4), and cannot be considered as a binding authority. The separation of the parish of Middlesbrough from the Stockton Union would not affect the irremovability of the pauper from the Stockton Union—31 & 32 Vict. c. 122. s. 34.

Poland, for the respondent.—The case is governed by *The Queen v. The Ipswich Union* (1). It has been contended by the appellants that that decision is not good law, because in *The Guardians of The Westbury Union v. The Overseers of Barrow-in-Furness* (4) other provisions of the Act relating to settlements were held to be retrospective; but that case was decided on a section of the Act passed for a different purpose. *The Queen v. The Ipswich Union* (1) was referred to in the argument and the judgment, and no doubt was thrown upon the propriety of the decision.

The word "parish" in section 34 does not include "union"—*The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5)—and consequently the subsequent residence of the pauper in the same union did not confer a settlement because it was in a different parish. In that case *The Queen v. The Brompton Union* (3), now relied on by the appellants, is shewn by the report in the *Law Journal Reports* to have been brought to the notice of the Court; but it was nevertheless decided that a residence for three years, partly in one parish and partly in another, within the same union does not confer a settlement. *The Queen v. The Brompton Union* (3) was followed

in *The Queen v. The Abergavenny Union* (6), but in both cases the pauper had resided in the same parish.

Glen, in reply.

GROVE, J.—The questions involved in this case are practically concluded by *The Queen v. The Ipswich Union* (1) and *The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5). The pauper resided in the parish of Stockton-upon-Tees for three years prior to July, 1870, when he went to reside in the parish of Middlesbrough in the same union, and the question for our decision is whether he has acquired a settlement in the parish of Stockton-upon-Tees.

The Queen v. The Ipswich Union (1) has decided that a three years' residence in a parish which had ended before the passing of 39 & 40 Vict. c. 61. s. 34, does not confer a settlement within the meaning of the section. That decision would not conclude the present case if a further residence in any parish in the same union was a sufficient continuation of the residence for the purpose of acquiring a settlement; but though such residence would be sufficient to sustain a *status* of irremovability, the case of *The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5) has decided that it would not be sufficient for the purpose of conferring a settlement. It has been argued that because, by 24 & 25 Vict. c. 55. s. 1, residence in two parishes within the same union is for the purpose of irremovability to be considered as residence in one parish, a similar construction should be given to this statute, but *The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5) has expressly decided the contrary. It has been also ingeniously argued that the Judges in *The Queen v. The Guardians of Ipswich Union* (1) did not intend to hold the Act to be non-retrospective when the *status* of irremovability continued, but unless we were to overrule *The Queen v. The Ipswich Union* (1), we cannot accede to that argument. I am, therefore, of opinion that our judgment must be for the respondent.

BOWEN, J.—I am of the same opinion.

(4) 47 Law J. Rep. M.C. 79; Law Rep. 3 Ex. D. 88.

(5) 50 Law J. Rep. M.C. 51; Law Rep. 6 Q.B. D. 576.

(6) 50 Law J. Rep. M.C. 1; Law Rep. 6 Q.B. D. 31.

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Not only do I think *The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5) to be binding, but I also think it to have been rightly decided. It seems to be plain that for purposes of irremovability a residence in the union under 24 & 25 Vict. c. 55. s. 1 is equivalent to a residence in the parish; but reading *The Guardians of Plomesgate Union v. West Ham Union* (5) with *The Queen v. The Ipswich Union* (1), the argument that for the purposes of settlement a residence in the union is equivalent to a residence in the parish must fail. It has been argued that *The Queen v. The Ipswich Union* (1) is not conclusive as to the effect of the 34th section of 39 & 40 Vict. c. 61, in a case where there was a break of residence in the parish, but the status of irremovability still continued. The counsel for the appellants based that argument upon a minute criticism of the language of Chief Justice Cockburn and Mr. Justice Mellor, and true it is they point out in their judgments that the argument of the respondent in that case would involve the acquisition of a settlement, although the status of irremovability had been long since destroyed, a result which they consider was not intended. That observation was, no doubt, well founded with regard to the construction of the section in that case, but it must be remembered that section 34 of 39 & 40 Vict. c. 6 is an enactment dealing not with irremovability but with settlement; and it appears to me that if we were to hold that the decision in *The Queen v. The Ipswich Union* (1) has no application in cases where the status of irremovability continues, we should be forgetting that the section has nothing to do with irremovability. In my opinion *The Queen v. The Ipswich Union* (1), together with *The Guardians of Plomesgate Union v. The Guardians of West Ham Union* (5), govern this case, and the respondent is entitled to judgment.

Judgment for respondent, with leave to appeal.

Solicitors—Shum, Crossman & Co., agents for Kidson, Son & McKenzie, of Sunderland, for appellants; Hare & Co., for respondent.

[CROWN CASE RESERVED.]

1881. }
Nov. 19. } THE QUEEN v. MARTIN.*

Maliciously inflicting Grievous Bodily Harm—24 & 25 Vict. c. 100. s. 20.

The prisoner was indicted under 24 & 25 Vict. c. 100. s. 20 for unlawfully and maliciously inflicting grievous bodily harm, and was convicted.

Shortly before the conclusion of a performance at a theatre, the prisoner put out the gas-lights on a staircase which the audience had to descend to leave the theatre, and placed an iron bar across a doorway through which they had to pass. The darkness caused a panic amongst the audience leaving the theatre, and several of them were seriously injured through the pressure of the crowd in the obstructed doorway:—

Held, that the conviction was right.

CASE reserved by the Recorder of Leeds.

At the general quarter sessions for the borough of Leeds, held on the 4th of July, 1881, Edwin Martin was tried upon an indictment charging that he did unlawfully and maliciously inflict grievous bodily harm upon George Pybus against the form of the statute, &c.; and by a second count that he did unlawfully and maliciously inflict grievous bodily harm upon Martin Dacey against the form of the statute, &c.

The indictment was framed on the 20th section of 24 & 25 Vict. c. 100 (1).

The evidence for the prosecution was to the following effect:—

The gallery in the Theatre Royal at Leeds is reached from the street by a stone staircase, which is lighted by three gas-lights, one of which is at the top, one on a landing about the middle and the third over the door of the pay office, which is at the bottom of the stairs. These lights are all fastened to the walls at the height of seven feet, or thereabouts, above the stairs or landings. Between the street and the bottom of the staircase there are a pair of

* *Coram* Lord Coleridge, C.J.; Field, J.; Hawkins, J.; Stephen, J.; and Cave, J.

(1) 24 & 25 Vict. c. 100, s. 20 enacts that "who-soever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour," &c.

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folding doors opening outwards into the street. Each of these doors is divided into halves, of which the halves nearest to the doorposts or walls on each side can be kept closed by means of strong iron bars let into sockets in the stonework of the staircase, and connected with the doors by iron bolts. These bars are movable. The practice was to open only the central halves of the doors whilst the audience were assembling and passing the pay office, so as to limit the number of those who could pass in at the same time; and to remove the iron bars and open the whole of the doors some time before the conclusion of the performance, so as to allow the audience to pass out into the street more quickly.

It was proved that on the night of the 30th of April, 1881, shortly before the conclusion of the performance, the folding doors were opened to their full extent and the iron bars placed against the wall of the staircase to the right hand of a person leaving the theatre, and close to the door, according to the usual practice.

The evidence shewed that the gallery on this night was filled to the extent of about three-fourths of its total capacity.

The defendant (who was well acquainted with the theatre, having assisted on several occasions as a "supernumerary") was proved to have been in the gallery on this night and to have been the first, or almost the first, to leave it at the conclusion of the performance.

It was proved that he ran quickly down the gallery staircase, and that as he did so he reached up with his hand and put out the gas-light on the middle landing and also that over the pay office.

It was also proved that as he passed out into the street he took one of the iron bars which was leaning against the wall close to the door, on his right hand side, and threw it or placed it partly across the doorway. Almost immediately after this had been done by the defendant the whole of the folding doors became closed. The evidence as to how this occurred was extremely vague. The result, however, of the doors being closed and the lower lights extinguished was to leave the lower part of the gallery stairs in almost entire darkness. Almost immediately after the lights

were put out a panic seemed to have seized the audience, who rushed down the stairs and endeavoured to find their way into the street. In consequence of the presence of the iron bar which the defendant had placed or thrown across one part of the doorway, and of the doors being shut, it was some time before any of them could reach the street, and in the meantime the pressure from behind forced those in front against and under the iron bar and against the doors, and a large number of persons were very seriously injured and had to be removed to the infirmary. Amongst those injured were George Pybus and Martin Dacey. The medical evidence was to the effect that George Pybus shewed signs of a fracture of the base of the skull, which was probably caused by his slipping and falling backwards as he was running down the stairs after the gas-lights had been extinguished, and so striking his head upon the stairs; and that Martin Dacey was suffering from collapse, the result of partial suffocation, arising from the pressure to which he had been subjected in the crowd or on the foot of the stairs.

It was clearly proved that the defendant was on the stage of the theatre after assisting the injured persons who had been brought there. There was no evidence of any previous quarrel or dispute between him and the managers or officials of the theatre, or between him and any person in the gallery.

The defence set up for the defendant was an *alibi*.

In summing up the evidence to the jury the learned Recorder directed them that malice was an essential ingredient in the offence charged against the defendant, and that if they were of opinion that the conduct of the defendant in extinguishing the gas-lights and throwing the iron bar across the doorway amounted to nothing more than a mere piece of foolish mischief, they ought to acquit him; but that if they believed that he did these acts with a deliberate and malicious intention they ought to convict him.

The following questions were left to the jury:—

1. Did the prisoner extinguish the gas-lights or either of them?

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2. Did he place or throw the bar across the doorway in such a manner as to make the means of exit more difficult?

3. If he did extinguish the lights or either of them, did he do so with the intention of causing terror and alarm in the minds of the persons leaving the gallery?

4. If he did throw or place the bar across the doorway, did he do so with the intention of wilfully obstructing the means of exit from the gallery?

5. Were Pybus or Dacey or either of them injured by reason of any of the acts of the prisoner; and, if so, by which of them?

The jury found the defendant guilty, answered the first four questions in the affirmative, and stated that they found that both Pybus and Dacey were injured by reason of each of the acts of the defendant mentioned in the 1st and 2nd questions.

The question for the opinion of the Court was whether the defendant was properly convicted on the above facts and finding of the jury.

No counsel appeared.

LORD COLERIDGE, C.J.—I have no doubt but that the prisoner was properly convicted. He was indicted under 24 & 25 Vict. s. 20, which enacts that "whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour," &c. Now what the prisoner did in the present case was this: There was a performance going on in the Leeds theatre; he was the first, or almost the first, to leave the gallery at the conclusion of the performance; he ran down the staircase, put out the gas-lights, and, as he passed into the street, he seized one of the iron bars, placed it across the doorway, and then went his way. The people in the theatre, as they came out, finding the place dark, very naturally fell into a panic and rushed forward, and of course met the iron bar, and a large number of persons were seriously injured. For that the prisoner was indicted, and the jury have found all that was necessary to sustain the charge, and that he did unlawfully and maliciously inflict grievous bodily harm

upon the persons named in the indictment without any weapon or instrument in his hand. The question is whether, under these circumstances, he was guilty within the meaning of the enactment, and I am clearly of opinion that he was. The prisoner must be taken to have intended the natural and probable consequences of that which he did. And what he did was that which would certainly alarm and frighten a number of persons, and also obstruct their exit from the theatre and cause them to run against the iron bar and do themselves serious injury. He acted "unlawfully and maliciously," not in the sense of actual malice against the particular individuals injured, but in the sense of doing an unlawful act calculated to injure, and by which others were in fact injured. Just as in the case of a man who unlawfully fires a gun among a crowd it is murder if one of the crowd is thereby killed. The prisoner, therefore, was properly convicted.

FIELD, J., and HAWKINS, J., concurred.

STEPHEN, J.—I am entirely of the same opinion, but I wish to add that the Recorder seems to have put the case too favourably for the prisoner, for he told the jury to consider whether the prisoner did the act "as a mere piece of foolish mischief." Now it seems to me that if the prisoner did that which he did as a mere piece of foolish mischief, unlawfully and without excuse, he did it "wilfully"—that is, "maliciously"—within the meaning of the statute. I think it important to notice this, as the word "malicious" is a word capable of being misunderstood. In the case of *The Queen v. Pemberton* (2) Lord Blackburn said that malice may be defined to be, and therefore be deemed to exist, "where any person wilfully does an act injurious to another without lawful excuse." This case comes within that definition.

CAVE, J., concurred.

Conviction affirmed.

(2) 43 Law J. Rep. M.C. 91; Law Rep. 2 C.C.R. 119, 122.

1882. } THE QUEEN v. THE GREAT
Feb. 24, 27. } YARMOUTH JUSTICES.

Justice of the Peace—Bias—Judez in sua Causa—Special Assessment Sessions.

Where a Justice, being an appellant against his assessment to rates by the Assessment Committee in respect of a house which he owns and occupies, takes part at the special sessions in reducing the assessment of other appellants similarly situated, and on his leaving the bench the other Justices reduce his assessment, and other assessments are reduced in the same way, the orders made are subject to bias, and may be brought up to be quashed on certiorari.

Rule to the Justices of Great Yarmouth to shew cause why a writ of *certiorari* should not issue to remove certain orders made upon appeals against the poor-rate for the parish of Great Yarmouth.

By virtue of 43 & 44 Vict. c. 7, the parish of Great Yarmouth was brought under the provisions of the Union Assessment Act, 1862. On the 3rd of October, 1881, the Assessment Committee made their valuation list, and a number of appeals were entered, under 6 & 7 Will. 4. c. 96, against their assessment to the special sessions of the Justices of the borough of Great Yarmouth.

Before the hearing of these appeals the following letter was written to the Justices' clerk by the clerk to the Guardians and Assessment Committee:—

"17th Nov. 1881.

"Dear Sir,—I beg to inform you that at the hearing of the poor-rate appeals on Tuesday next, objection will be made if any Justices who are rated in Yarmouth proceed to hear the appeals.

"Yours faithfully,

"F. Danby Palmer.

"William Holt, Esq.,

"Clerk to the Justices."

On the 22nd of November, when the special sessions were held, there were present on the bench several members of the Assessment Committee, and Charles Corey Aldred, the mayor and chairman, announced that "the Justices other than those who were members of the Assessment Committee would hear the appeals." It appeared that the Justices' clerk had laid

the objection before counsel and been advised that, on the construction of 16 Geo. 2. c. 18, and 27 & 28 Vict. c. 39, Justices who were ratepayers were not disqualified from acting. No further objection was taken, and the first six cases in the list were heard before the Justices who were not on the Assessment Committee, Charles Corey Aldred acting as chairman. These were all appeals in which the rateable hereditament was in the occupation of the owner, and the Justices had to fix such rent as they could best arrive at by comparison and a judgment on the property itself. In each of the six cases the assessment was reduced. In the seventh case Charles Corey Aldred, the mayor, was the appellant, and he went from the bench to the body of the Court to conduct his own appeal. The mayor's rateable property was in the same position, with regard to his being both owner and occupier, as the preceding cases, and the assessment in his case was reduced. Another appeal was called on, and another reduction was made; whereupon the clerk to the Assessment Committee declined to proceed, and an adjournment took place to the 20th of December, when the appeals were concluded, the mayor sitting as chairman as before.

Bulwer, Q.C., and *Moulton*, shewed cause on behalf of the Justices.

Forbes, Q.C., and *R. S. Wright*, supported the rule.

The arguments sufficiently appear from the judgment of Field, J.

FIELD, J.—With the greatest possible reluctance we have come to the conclusion that we have no alternative but to make the rule absolute. The first duty of the Court is to see that the administration of justice is not only absolutely pure in itself, but also that nothing should be done which is calculated to bring it under serious and substantial doubt. It is not enough that the decision itself should be right, and that the person who gives that decision should act on right principles, as we assume in this case that he did. The rule of law goes a step further, and it is this: that any man who has a personal interest in litigation, or who has an indirect or direct motive for inducing a particular decision, should carefully abstain from putting himself in such

The Queen v. Great Yarmouth Justices.

a position as that unconsciously to himself a bias adverse to the true and pure administration of justice might take possession of his mind. It is a principle which has been well acted upon in a case of not so high import as the administration of justice—namely, the relation between principal and agent. Nothing can be clearer than that where an agent takes reward, or puts himself in the position of having a personal benefit out of a matter in which he is in his employer's interest, it is not necessary to shew any damage resulting; it is enough to shew that he has put himself in a position which is inconsistent with a fair and unbiased discharge of his duties. You can never tell what effect a bias may have. In the case of *Harrington v. The Victoria Docks* (1) the jury found that the plaintiff had received commission from the superintendent of the works, although that was inconsistent with his duty to his employer, but that he had not acted under any bias, and that no damage whatever had resulted to his employers from his conduct. Yet the Court held, and their holding has been supported ever since, that the contract was voidable.

Applying these principles to this case, it is difficult not to see that the course adopted was not only to be deplored, but condemned. The mayor knowing, as all his brother Justices must have known, that he was one of the litigants before them against the Assessment Committee who were parties to every appeal which he had to decide, acted in six appeals by reducing the amount of the assessment—a decision which, when his own property came to be considered, it is impossible to say would not have a considerable effect on the minds of those Justices whom he left to decide his own appeal. If they argued the matter among themselves, and the mayor said anything to his brother Justices, what he said would have been what he was going to repeat half an hour afterwards in his own case. Had it been such a matter as an assault, the fact that the mayor was going to conduct his own case would have had no bearing on previous cases, but in this instance there was a common feature in all the cases. His

(1) 47 Law J. Rep. Q.B. 594; Law Rep. 3 Q.B. D. 549.

house might be in the middle of the town, and the others might be on the seashore, but the elements were the same—namely, that they were houses with large gardens and in the occupation of the owners, so that there would be no fixed rent to go by. You have to take all the hereditaments within the same area of rating as the hereditament in question, and compare them, in order to arrive at a conclusion.

The facts which I have stated are clearly admitted; but Mr. Bulwer relied on the contention that the objection had been waived, or, more accurately, that the conduct of the Assessment Committee by their clerk had been such that they may be taken to have tacitly consented to the jurisdiction. Nothing can be clearer than that a man who is willing to consent to a jurisdiction cannot afterwards be allowed to complain of it. If he runs the chance of a successful decision, he cannot, merely because he gets an unsuccessful decision, turn round and say that the Court had no jurisdiction. At one time I must say that I was inclined to think that the letter of the 17th of November was limited in its form to the objection to rated inhabitants, but by it objection was taken to the very presence of the men themselves. It was urged that, although the clerk to the Assessment Committee may not have had in his mind at the time the circumstance that there were litigants on the bench, the words were broad enough to convey that objection. The two objections are really of the same nature and character, and, under the circumstances, we should be acting beyond the fair construction of the facts if we held that the Assessment Committee had, by their clerk, so conducted themselves as to render it unjust or inequitable for them to take the objection which they now take. The rule, therefore, will be made absolute to bring up to be quashed the orders made both on the first and second occasions.

BOWEN, J.—I am of the same opinion.

Rule absolute.

Solicitors—Maples, Teesdale & Co., agents for Holt, Yarmouth, for Justices; Torr & Co., agents for F. D. Palmer, Yarmouth, for the appellants.

1881. { THE DUKE OF BEDFORD v. THE
Dec. 12. { OVERSEERS OF ST. PAUL, COVENT
GARDEN.

*Rating — Poor-rates — Market Tolls —
User of the Soil — Tolls in the nature of
Stallage.*

Where an open market is divided under the provisions of an Act of Parliament into parts, each of which is appropriated to a special purpose, such as potato stands, fruit market, and flower stands, and by the Act tolls or rents are reserved to the owner of the market from those who use the several divisions of the market, such tolls arise out of a use of the soil, and are in the nature of stallage tolls, so as to be rateable for the relief of the poor.

CASE stated by the Court of General Assessment Sessions, held, under the Metropolitan Valuation Act, 1869, at the Guildhall, Westminster, in the appeal of his Grace Hastings, Duke of Bedford, in respect of certain hereditaments described in the valuation list for St. Paul's, Covent Garden, as Covent Garden Market. The Assessment Sessions altered the valuation list by reducing the gross value from 12,000*l.* to 11,250*l.*, and the rateable value from 10,000*l.* to 9,375*l.*, subject to the decision of the Queen's Bench Division on this case.

The appellant is the owner of the freehold of Covent Garden Market, and also of the streets that give access to it—namely, King Street, James Street, Russell Street, Tavistock Court, Southampton Street, and Henrietta Street.

The right to hold a market in Covent Garden, for the buying and selling of fruit, flowers, roots and herbs, was granted under letters patent in the year 1661 by his late Majesty King Charles 2 to William, Earl of Bedford, the predecessor in title of the appellant, and an Act was passed in 1813 (53 Geo. 3. c. 71) for further regulating Covent Garden Market, and another Act in 1828 (9 Geo. 4. c. 113) for the improvement and regulation of the said market. By such charter and the said Acts of Parliament the right to take and receive various tolls as therein specified was granted to the predecessors of the appellant.

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From the date of such letters patent down to the present time the appellant and his predecessors in title or their leasees have held such market and received the market tolls as in such charter and Acts are specified.

Up to the time of the passing of the Act 53 Geo. 3 the toll on produce brought into the market had been payable by the purchaser, but in consequence of its inconvenience this practice was abolished by the 5th section of the said Act, and the tolls were then made payable by the seller as in such section mentioned.

Although the market is open and business transacted in it upon every day of the week except Sundays, the principal market days are Tuesdays, Thursdays and Saturdays. Upon the mornings, however, of most week days, the entire space up to the edges of the foot pavements in front of the houses that surround the market is filled by carts and waggons bringing produce to the market, and the streets leading to the market are also occupied by them.

The area of the market is defined by the letters patent, and extends to the fronts of the houses and buildings on each side, including the foot-pavements and roadways. For the purpose of defining the portions of the roadway to be respectively repaired by the appellant and the parish authorities, a line or course of pitching stones is laid in the carriage way about twenty feet from the footway. This line or course is known as the outer denter stone, and the space between it and the pavement is kept in repair by the parish authorities, while the appellant repairs the roadway upon the inner side of the said outer denter stone. This arrangement was made between the duke and the parish authorities in consequence of the user by the public of the whole of the said roadway round the market for general traffic, when not occupied by market waggons or carts, although on every morning and on market days the whole of the roadway is used for the purposes of the market.

Previously to the passing of the said Act of Geo. 4, the market was conducted in the open air. The present buildings were erected, and the original open area broken up under the provisions of that

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Act, and in accordance with the plan annexed to it, and for the reasons therein mentioned.

Immediately after the passing of the said Act the present buildings were erected in substantially the same manner as they exist at present. The roof, however, over the long market was not erected until 1875.

The central avenue is mainly devoted to shops. They are used for the purpose of exposing fruit, flowers and vegetables, and selling them in retail. Besides the shops there are other rooms or buildings, used principally as counting-houses by the salesmen hereinafter referred to, and there are cellars which are occupied as store-rooms.

All the shops, counting-houses, buildings, cellars and houses in the market are let on weekly tenancies, the appellant keeping all the buildings in repair, and paying all rates, taxes and outgoing, and the appellant admits his liability to be rated for all such rents so received, after deducting necessary expenses and outgoing.

It was agreed between the respondents and the appellant, that the year 1879 afforded a fair criterion of the receipts and expenditure in the market, and that the rate should be assessed on such sums as the Court should determine, to be rateable on the basis of the receipts and expenditure of that year.

In the year 1879 the appellant received from the market for rents and tolls together the sum of 17,805*l.*, against which the expenses of the market for the same period amounted to 8,346*l.*

Out of the sum of 17,805*l.*, 8,747*l.* was for rent, and the balance of 9,058*l.* was for market tolls, in respect of which the appellant claimed that he was not liable to be rated. He also alleged that 3,500*l.* out of the sum of 8,346*l.* expended in the market in the last paragraph mentioned was attributable to the rent, and the balance of 4,846*l.* to the market tolls, and that such sum of 3,500*l.* should be deducted from the sum of 8,747*l.* received from rents, to arrive at a sum on which he was liable to be rated.

An adjournment of the hearing of the appeal took place, both parties, with the leave of the Court, agreeing to appoint Mr. Petheram, Q.C., to determine the sums on which the assessments were to be

made, according to an interlocutory judgment of the Court of General Assessment Sessions, and the alternative figures on which the assessment should be made in case that judgment should not be upheld. The material part of his report is fully set out in the judgment of Grove, J.

Grantham, Q.C. (*G. P. Goldney* with him), argued for the appellant.

Holl, Q.C. (*Castle* with him), for the respondents.

The following cases were cited:—*The Mayor of Great Yarmouth v. Groom* (1), *The Queen v. St. Pancras* (2), *The Queen v. Morrish* (3), *Bridgeland v. Shapter* (4), *The Duke of Bedford v. Emmet* (5), *Roberts v. The Overseers of Aylesbury* (6), *The King v. Bell* (7) and *The Queen v. Caswell* (8).

GROVE, J.—The question in this case is, whether the Duke of Bedford, as owner of Covent Garden Market, is liable to be rated for certain sums of money received by him, some of which are called in the Act of Parliament under which he receives them “rent,” and some “tolls.” Certain questions were submitted to Mr. Petheram, and there are six findings upon which the points of law in this case arise. The total yearly income received from Covent Garden Market amounted in the year 1879 to 17,448*l.* 7*s.* 10*d.* This is divided first of all into sums paid and received for rent, by the name of rent, for all the shops and offices in the market, the potato stands, the yearly cart stands, the yearly pitching stands, the cellars and the flower stands, amounting to 8,572*l.* 7*s.* 6*d.* For that the Duke of Bedford admits he is liable. Secondly, sums paid and received for waggons and carts in the stands called the casual cart stands, amounting to 154*l.* For that the Duke of Bedford by his counsel contends that he is not liable.

(1) 32 Law J. Rep. Exch. 74.

(2) 46 Law J. Rep. M.C. 243.

(3) 32 Law J. Rep. M.C. 245.

(4) 5 M. & W. 375; 8 Law J. Rep. Exch. 246.

(5) 3 B. & Ald. 366.

(6) 22 Law J. Rep. M.C. 24.

(7) 5 M. & S. 221.

(8) 41 Law J. Rep. M.C. 108; Law Rep. 7 Q.B. 328.

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Thirdly, sums received from carts and waggons which for want of room cannot be brought into the casual cart stands, and are placed in the unoccupied parts of the market, but which pay at the same rate as those which are placed in the casual cart stands, amounting to 846*l*. For that by the assessment committee the Duke of Bedford was found not rateable, but it is left to the Court to say whether he is rateable or not. Fourthly, sums received for tolls, according to the potato schedule, for potatoes placed, pitched, exposed for sale, or sold by persons in stands of which such persons are not the holders, amounting to 574*l*. For that it is contended that the Duke of Bedford is not liable to be rated. Fifthly, sums received as tolls according to the fruit schedule for produce sold in the market by persons who rent shops or offices in the fruit market, and whose rent is included in No. 1, amounting to 3,707*l*. 8*s*. 7*d*. Sixthly, sums received on sales, according to the schedule, for produce by persons who rent nothing in it, but who use the shelter and convenience of the market-houses for the purposes of their trade, amounting to 3,594*l*. 11*s*. 9*d*.

The Act provides that certain parts shall be appropriated, such as the casual cart stands. Some have no material division, but are marked off.

The section of the Act on which the case mainly depends is section 21 of 9 Geo. 4. c. 113, which begins as follows: "Be it further enacted that from and after the passing of this Act it shall be lawful for the said Duke, his heirs or assigns, being owners of the said market, and their tenants thereof, to demand and take, or cause to be demanded and taken, of and from all and every person or persons who shall place, pitch, expose for sale or sell within the said market any fruit, flowers, vegetables, roots or herbs, all such toll or tolls as at the time of the passing of the before-recited Act of the fifty-third year of the reign of his late Majesty King George the Third, was or were usually taken or collected within the said market, or was or were usually payable for or in respect of the same."

There was a similar clause in the Act of Geo. 3, which is repealed, but this portion of the section has no bearing on what we are going to decide, because we

do not decide on the 846*l*. The case depends on the other part of the section, which continues: "and when and as any part or parts of the said market shall be altered according to the division and arrangement hereinbefore authorised to be made, it shall be lawful for the said duke, his heirs or assigns, being such owners as aforesaid, and their tenants of the said market, at all times thereafter to demand and take, or cause to be demanded and taken, of and from any person who shall hold, use or occupy any stand in such part or parts of the said market respectively, the rent or sum of money mentioned or specified in respect of such stand in the schedule to this Act, and of and from every person who shall place, pitch, expose for sale, or sell within such part or parts of the said market respectively, any fruit, flowers, vegetables, roots or herbs, on each and every day on which the same shall be so placed, pitched, exposed for sale or sold, the toll or tolls, or sum or sums of money mentioned or specified with respect to such part or parts respectively in the said schedule." All we have to decide comes within the latter half of this section. There is power to take the accustomed tolls, while it remains an unaltered market, and when the division takes place the rent and money mentioned in the schedule may be taken. In the schedule we have specific tolls; most of them may accord with the old tolls, but there is an entirely new arrangement. Take the "casual cart stand," for example, "for every waggon containing carrots" so much, "for every waggon containing fruit," a different toll. "For each stand for fruit, flowers," &c., another toll. Then follow provisions with reference to the "yearly cart stands," which are not apparently let by the day to carts, but let at a "rent" after the rate of a shilling per annum for every square foot, and a "toll" of one shilling for each waggon for fruit, &c., not the growth of the holder of the stand. So it goes on with regard to the fruit market and the flower stands and the potato market. The word "stand" is continually used with reference to these.

The Act appropriates certain parts to definite uses. Are these parts rateable? I am of opinion that they are. The value of the ground is enhanced to the duke by

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the specific occupation of these portions of the land by the persons using them, who are the sellers, it should be recollected, and not the buyers. The tolls originally paid in markets were paid by the buyer on the sale of goods, the somewhat singular reason as given in *Comyn's Digest* being that "toll is a reasonable sum due to the lord of the fair and market for things sold there which are tollable, and which was usually allowed for witnessing the sale (2 *Co. Inst.* 220)." A clerk of the market had to authenticate the sale. This was the common law, but by custom the toll may be due for all goods brought into the market, and so for goods not sold, that is stallage. If no specific place is appropriated, that is toll in the nature of a franchise, and not rateable. That was decided in the case of *The Mayor of London v. St. Sepulchre* (9). The distinction, no doubt, is very fine, as Mr. Justice Blackburn says in that case, but in every case in which a specific place has been appropriated to the sale of any particular goods, the tolls taken seem to be rateable. Where a distinct portion of ground is allotted, the payment is for stallage, which appears originally to have consisted of something in the nature of posts or rails, without breaking of the soil. Pickage, on the other hand, is where the soil is dug up for the purpose of placing posts in it, but a person who had the liberty of stalls was accountable for stallage, although no stall was erected, as in the case of an adjoining shop, *The Duke of Bedford v. Emmet* (5). Mr. Justice Bayley and Mr. Justice Holroyd in that case were of opinion that the appropriation of certain parts of the market for specific purposes was something in the nature of stallage. The case of *The Mayor of Yarmouth v. Groom* (1), where nothing but a basket was used set up like a table, goes further, and shows that there may be stallage, although there is nothing like a stall. The difference between stallage and ambulatory traffic is that the one is rateable and the other not. Although a man moving about with a donkey and panniers may injure the soil more, the fixed place gives a special advantage. Here all the space within the block marked out is all marked out for fruit, flowers, &c., respectively. It is true that by permission

(9) *Law Rep.* 7 Q.B. 333.

other things may be brought there, but still they use a definite place. In the case of fruit the toll is different where particular stands are used, and otherwise. Each person not having a stand pays so much per sack, or so much per head-load, whereas there is a more definite rent where the person holds a stand. Section 11 of the Act shews that the toll is payable for the use of a definite portion of the market. Nothing is to be exposed in the fruit market on those parts which are let but the goods of the holder of the stand; but on those that are not let any person may expose on paying the toll in the schedule. These tolls are still paid in respect of a user of a definite portion of the soil. Are they placed on a definite portion of the market set out by metes and bounds? I think they are. All are in the nature of stallage. They are in respect of a user of the soil, although there is a distinction between rents and tolls which applies. The first are for a permanent, and the second for a temporary use. I think, therefore, the Duke of Bedford is liable to be rated in respect of any portion of this market which has been specifically marked out and appropriated, according to the directions of the Act, into these definite stalls, and that equally whether there is a single stall for each holder, or a comparatively small portion of the market assigned to a certain number of holders by a sort of tenancy in common. They do not get the advantage the less because the places which they do not want are let to other people who pay accordingly.

These observations cover all the case except the portion producing the sum of 846*l.* for unappropriated ground. As to the rateability of that portion I have some doubt, which I do not say is shared by my learned brethren, but we think that we have not sufficient information, and the case ought to go back to Mr. Petheram, to find whether that unappropriated part is used definitely or indefinitely.

LOVES, J.—The question whether the Duke of Bedford is rateable in respect of these tolls seems to me to depend entirely on the construction of the 21st section of the Act of Geo. 4, and the schedule referred to in that section. I take it that tolls taken in respect of articles carried into a market, which may be called market

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or franchise tolls, are not rateable, but tolls taken in respect of some use or enjoyment of the soil, being in the nature of stallage, are rateable. Does section 21 make the tolls payable in respect of a use of or convenience in the soil or not? I think that it does. Before the Act the tolls were taken for exposing for sale in any part of the market. The public had equal rights indiscriminately. Section 21 converted them into tolls for the use of soil specially appropriated, and they became in the nature of stallage tolls. It is not necessary to refer to the decided cases. With regard to the unappropriated parts I think there are not sufficient facts.

BOWEN, J.—I am of the same opinion. The whole point lies in section 21 of the Act. Is the effect of that section to change the toll, or whatever it may have been before, and make it a toll or sum of money payable in respect of some user of the soil beyond the mere entry into the market, which the person paying the toll would otherwise have the right to enjoy in common with the rest of the public?

The case at common law would stand thus: The market would be a definite place created by the king's grant for the purpose of selling goods or chattels. The market, unless anything else is said in the king's grant, is free from toll. It was in the king's power to grant a reasonable toll to the lord of the market. For what? Why in respect of the convenience he supplied for the witnessing of contracts made in the market. For, be it remembered, a market was a very important place. It was a place in which a sale changed the property not merely as between the parties, but as against all persons in the world, and a witness of a sale in market overt was of importance to the public, and to the parties concerned in the transaction. Accordingly an officer appointed by the lord took his fee. The grant, however, of the toll in the market which refers to the witnessing of the sale must be special, otherwise no toll could be exacted for goods sold. But besides this toll, which my learned brothers have called a franchise toll, there was another kind of toll which might be payable to the lord. It was a toll payable for or in respect not merely of some user of the soil (because it may be said that in one way every

body who goes into a market uses the soil), but in respect of some user of the soil beyond the mere entry to the market, which was enjoyed in common by all the rest of the public. So stallage was one kind of toll which was payable to the lord of the soil, which I take to be a toll in respect of standing room within the market, as defined by a series of cases decided. Then there is pickage, for something different, a toll not payable merely in respect of standing room, but in respect of the privilege of picking a hole in the ground in order to make the stand more convenient by fitting a pole or a rail, or the like, in the soil. All that is set out in *Coke's Institutes*, which have been referred to. He says, "Toll in a fair or market is a reasonable sum of money due to the owner of the fair or market upon the sale of things tollable within the fair or market." That is the first class of toll, and he further says, "or for stallage, pickage or the like."

Stallage and pickage, or the like, is the second kind of toll, and we have really to consider whether the toll in question is a mere toll payable upon the sale of goods within the market, or a toll for the bringing of goods within the market, as by certain ancient custom in special markets; or whether, on the other hand, these sums of money, be they called in the Act of Parliament rents or what not, are in effect payments directed by statute in respect of some use of the soil beyond that mere use of the market which the rest of the public and the other vendors enjoy.

The test is occupation or use of the market beyond that which the general public have—some standing room in it distinct from an entrance into it. I will not go through the cases which illustrate the way in which that test may be applied. I point out simply that the case of *The Mayor of Great Yarmouth v. Groom* (1) is one which shews most clearly how a case may fall on one side or the other of the line. It had been held in *The King v. Bell* (7) that a person who brings a sack of corn into a market and lays it down is not liable to stallage, provided all he does is simply to use the ground of the market as, so to speak, an assistance for the sale of his goods without any exclusive occupation of the soil, as contrasted with that

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which the rest of the public enjoy. On the other hand, in the case of *The Mayor of Great Yarmouth v. Groom* (1), it was held that a woman who brought a basket into the market with goods in it became liable to stallage when it was found out that the basket was one which had flaps, which fell down and converted it into a table.

In a case reported in Willes (10), to which there is a note by the learned editor, it is pointed out clearly that the right of bringing a table into a market and standing the table in it, gives rise to stallage toll. It seems to me that this is also consistent with what is said in the case of *The Mayor of Yarmouth v. Groom* (1). It may be very important when you come to deal with the question of the waggons and the unappropriated part of the market. I can quite conceive that in any markets by ancient custom a waggon may perambulate the market without exposing itself to toll at all, but I am not by any means certain if a waggon took up a definite place in the market, and had that definite place allotted to it, that the owner of the waggon might not be bound to pay stallage. Because, after all, there really is no difference between a thing which has got wheels and a thing which has not got wheels, as soon as you convert it into a table for the sale of merchandise. As soon as a thing is converted into a table, and used for the sale of merchandise, I conceive a toll will be payable.

Then, with regard to the particular Act of Parliament, what is the nature of the payments which are created by the Act and arise under the Act? They are not exactly tolls in the nature of franchise tolls, because a previous statute has done something with them since they were tolls in the nature of franchise tolls. They are not stallage tolls in the sense of common law stallage, because they are statutory payments, and not common law payments. The question really is, whether the statute has not so operated as to create payments in respect of the duke's title to the soil, although they are not exactly stallage tolls. I agree with my brothers Grove and Lopes that one has only to read section 21 of the Act to find out what was done under the old Act before any change was made in the

old original tolls of this market except so far as to give the duke a power of collecting them within the market, and to convert an incidence of burden upon the buyer of the goods to an incidence on the seller. But then came this Act, which in section 21 no longer leaves the old toll as it was. In the early part of the section it does indeed leave it as it was for a certain time—that is to say, until the market was re-distributed into its present areas—but as soon as the market was to be parcelled out, and was parcelled out, into the apportioned areas, both for the convenience of the public and of the sellers, these statutory payments arose, and could be collected by the duke. They were no longer the old tolls. They were something different, and new tolls. In respect of what did they arise? They were no longer tolls in respect of the mere entry of goods into the market. They were no longer in respect of the mere sale of goods in the market. They were tolls raised for the sale of goods within appropriated portions of the market, places appropriated to the very sellers of the goods. The sellers had something more than they had before. Before they had the right to enter the market freely and perambulate it. Now they have a convenience appropriated to them, and that could only be taken from the duke by the consent of the duke or by the statute. I see nothing at all unreasonable in supposing that the statute which gave an additional convenience to the seller meant to make the seller pay in respect of that convenience, and if it was a payment in respect of that convenience, and not in respect of the entry into or sale within the market, it seems to me to fall within the class of tolls which enhance the value of the occupation of the soil, and which are, as Coke says, in the like nature with stallage tolls. I do not go through the section of the Act, after what my learned brothers have said, with the view of applying the principle I have endeavoured to point out. I will only add one word more as to the general part of the market into which the waggons go, which are excluded from the casual cart stands by reason of the pre-occupation of the casual cart stands themselves. If I were to decide the case on my immediate impression I am by no means sure I should not think the

(10 *The Mayor of Nottingham v. Lambert*, Willes 116.

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tolls received from these waggons were rateable, because it seems to me that it might very well be, and probably is the case, that they have standing room allotted to them according to the practice and regulation of this market, and that as soon as they take up their places, there they stop, and enjoy their places as long as they like. If that is so it seems to me the waggon might be considered as simply a table; but, on the other hand, I quite agree with what my brother Grove has said, that it would be far more convenient, before deciding on the law with respect to this particular item, to see what the particular facts are as to the previous customs in the market.

Solicitors—J. R. Bourne, for appellant; Edward Jennings, for respondents.

[IN THE COURT OF APPEAL.]

1882. { THE QUEEN (on the prosecution
March 15. { of the *East Ham Local Board*) v. BARCLAY AND ANOTHER, *Justices of Essex*.*

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 211—Assessment of Premises let on Short Tenancies—Assessment of Owner instead of Occupier—Rateable Value where Owner assessed for Tenements whether Occupied or Unoccupied.

The Public Health Act, 1875, empowers, by section 211, the rating authority to assess to the rates the owner instead of the occupier of premises where the rateable value does not exceed ten pounds, or where the premises are let to weekly or monthly tenants, and provides that in such cases the owner shall be assessed on a reduced estimate, not being less than two-thirds nor more than four-fifths of the net annual value, and where such reduced estimate is in respect of tenements whether occupied or unoccupied, "then such assessment may be made on one-half of the amount at which the tenements would be liable to be rated" if they were occupied and the rate were levied on the occupiers:—Held (affirming the judgment of the Queen's Bench Division), that the rating authority has under this

* *Coram Coleridge, L.C.J.; Brett, L.J.; Holker, L.J.*

section a discretion as to the mode of rating, but that if it rates the owner for such premises whether occupied or unoccupied, then the assessment must be upon one-half the rateable value.

Appeal from the Queen's Bench Division.

The case is reported *Ante*, p. 27.

The East Ham Local Board made a general district rate under the Public Health Act, 1875 (1), and passed a resolution that the owners of property let on monthly or weekly tenancies should be rated instead of the occupiers, that they should be rated whether the tenements were occupied or unoccupied; and the board rated them at two-thirds of the net annual value of the tenements.

A rate was accordingly levied on R. Weaver, in respect of twenty-seven cottages belonging to him which were let upon weekly tenancies. Twenty of these cottages

(1) 38 & 39 Vict. c. 55, s. 211:—"With respect to the assessment and levying of general district rates under this Act, the following provisions shall have effect: namely,

1. General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions, regulations and conditions; namely,

(a) The owner, instead of the occupier, may at the option of the urban authority, be rated in cases—

Where the rateable value of any premises, liable to assessment under this Act, does not exceed the sum of ten pounds; or,

Where any premises so liable are let to weekly or monthly tenants; or,

Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly. Provided, that in cases where the owner is rated instead of the occupier, he shall be assessed on such reduced estimate, as the urban authority deem reasonable, of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers."

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were unoccupied, and the local board rated him upon all of them at two-thirds of their annual value. R. Weaver declined to pay the rate in respect of the cottages which were unoccupied, and a summons was taken out by the board, calling on him to shew cause why a distress warrant should not issue. The Justices declined to issue a distress warrant, in respect of the rate assessed upon the unoccupied premises, and a rule was then obtained by the local board for a *mandamus* to compel them to do so, which was afterwards discharged.

The local board appealed.

Day, Q.C., and *H. Atkinson*, for the appellant.—The contention of the owner of these tenements is that if he is assessed on property whether occupied or unoccupied, he cannot be assessed on more than one-half the net annual value, and the judgment of the Court below supports that view; but it is submitted that the section (1) which applies says distinctly that the board may make the assessment at one-half, not that it must do so; the first and the second parts of the proviso must be construed together, and the result is to give the board a discretion as to the amount.

[BRETT, L.J.—Is it not rather that the board may, at its option, rate the owner, but that if it does so in respect of unoccupied premises then the rate must be assessed on one-half the net annual value?]

It is submitted that the effect of the latter part of the proviso is to substitute the limit one-half for the limit two-thirds given in the earlier part, so that the higher limit of four-fifths still remains, although the lower limit is altered.

The respondent did not appear.

LORD COLERIDGE, C.J.—I am of opinion that this judgment should be affirmed. The case appears to me to be reasonably clear. Section 211 of the Public Health Act, 1875 (1) gives to an urban authority power at its option to rate in certain cases the owner instead of the occupiers of premises of a certain kind. The statute first gives a general power, and the portion of the statute immediately following upon this general power has reference to places

in which the tenements rated are occupied, and to such cases the first half of the section applies. Then comes the case of a number of small tenements occupied by fluctuating tenants, and with respect to these power is given to rate the owner of such tenements whether they are occupied or unoccupied. Now in such a case, as the owner may be receiving no rent for a portion of the premises for which he is nevertheless rated, it has been provided, on what may be called a rough scale of justice, that he is to be rated on only half the rateable value. On the one side the urban authority secures the payment of the rate by a substantial person, while on the other hand the owner is in such a case protected from being called on to pay upon more than half the rateable value. The words will allow of this construction, which seems to me reasonable and just. I think that the earlier part of the proviso applies to cases in which the premises are occupied, while the latter part, which is introduced by the word "and," a word which has here, as it seems to me, the same meaning as "but," applies to the case of premises which are rated even though they may be unoccupied. It appears to me that this construction is intelligible, and that the provisions of section 4 of 32 & 33 Vict. c. 41 assist the view which this construction supports, for by that statute a reduction of fifteen per cent. on the amount of the rate is allowed to owners compulsorily rated under that statute.

BRETT, L.J.—I think that reason and the expressions in the statute both support the judgment of the Queen's Bench Division. In the first place it is to be observed that the owner has no option, his consent is not required to what is done under this section. I am of opinion that the earlier part of the section applies only to cases in which there is both an owner and occupier. The use of the word "instead" shews that this must be so. It is also to be noted that the question whether an owner is to be rated or not is discretionary, and not imperative, that this is so the use of the word "may" shews. But when once the urban authority has exercised the discretion thus given, then there comes a limitation as to value, and

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this limitation is imperative within the limits fixed by the section. The Legislature having imposed an imperative limitation uses the word "shall." Now if the section stopped there the result would be that an owner would not be rated whenever there was no occupier; but the section goes on and gives an urban authority power without the consent of the owner to rate an owner in respect of tenements of a certain kind whether occupied or unoccupied. Now one would expect to find this question also left in the discretion of the rating authority, and so it is—for the word "may" is left in this part of the proviso, so that in this matter the urban authority has a discretion; then we again find a limitation, and although different words are used from those which are placed in the earlier part of the section, that is because there is, as is so often the case in the English language, an elliptical form of expression, the words "shall be" being left out; but the reasonable meaning is the same, and it is that the assessment may be made as the urban authority shall determine, but that if made in a certain way it shall be made subject to an imperative limitation; and thus the latter part of this proviso, though differing in form, has in reality the same force as the earlier part—the limit is fixed, and the rate must be on half the amount of the rateable value. This appeal cannot be sustained.

HOLKER, L.J.—I have little to add, agreeing as I do with what has been already said. The proviso appears to me to be reasonable and just. It is reasonable that in certain cases the owner should be rated instead of the occupier; but it would not be reasonable that in this case the rate should be on as high a rateable value. This distinction is clearly marked out in the section before us, and it appears to me to be based on an intelligible principle.

Appeal dismissed.

Solicitors—Wilson & Son, for appellant; defendant in person.

1882. { POOL AND FORDEN HIGHWAY
March 7, 11. } BOARD v. GUNNING AND
OTHERS.

Highway—Highways and Locomotives Amendment Act, 1878, ss. 23 and 36—Limitation of Summary Proceedings—Certificate of Surveyor.

The six months within which summary proceedings under section 23 of the Highways and Locomotives Act, 1878, may be taken for recovery of expenses incurred by a highway authority, by reason of damage to the highway caused by excessive weight or extraordinary traffic thereon, are to be computed from the certificate of the surveyor.

CASE stated by magistrates under 20 & 21 Vict. c. 43.

The appellants, the authority for the repair of highways, had incurred extraordinary expenses in repairing a highway within their district, by reason of damage caused by excessive weight and extraordinary traffic thereon, conducted by the respondents, owners of a mine in the neighbourhood.

The damage was caused by locomotive engines, trains and trucks, conveying minerals from the respondents' mine, from the 29th of September, 1878, to the 25th of March, 1879.

On the 19th of May, 1879, the appellants' surveyor made his certificate to the above effect, in accordance with section 23 of the Highways and Locomotives Act, 1878 (1).

(1) Highways and Locomotives Amendment Act, 1878 (41 & 42 Vict. c. 77), s. 23: "Where, by a certificate of their surveyor, it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expenses of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the Court having cognisance of the case to have been incurred by such authority, by reason of the damage arising from such weight or traffic as aforesaid: Provided that any person against

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On the 15th of September, 1881, the appellants sent to the respondents a notice of the amount so incurred and a demand for payment; and on the 24th of November, 1881, the appellants took out a summons against the respondents, under section 36 of the Highways and Locomotives Amendment Act, 1878, to recover the amount (2).

On the hearing of the summons it was contended on behalf of the respondents that the matter of complaint was the doing of the damage, and that the time of limitation of six calendar months ran from the 19th of May, 1879, the date of the surveyor's certificate, and that therefore the complaint was not in time. On behalf of the appellants it was contended that the time of limitation ran from the notice and demand, and that therefore the complaint was in time.

The Justices were of opinion that the six months' period of limitation ran from the date of the completion of the damage done, or from the date of the surveyor's certificate, and decided therefore to dismiss the summons; but by consent of both parties they heard the case upon the merits, and assessed the damage against the respondents for excessive weight at 140*l.* 10*s.* 5*d.*, in case the Court should be of opinion that the six months' period of limitation ran from the date of the demand.

J. F. Clerk, for the appellants.

whom such expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section, for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section."

(2) By section 36, "All offences, fines and expenses, under this Act or any by-law made in pursuance of this Act, may be prosecuted, enforced and recovered before a Court of summary jurisdiction, in manner provided by the Summary Jurisdiction Acts, that is, 11 & 12 Vict. c. 43 (Jervis's Act)."

By 11 & 12 Vict. c. 43. s. 11: "In all cases where no time is already, or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or Acts of Parliament relating to each particular case, such complaint shall be made, and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose."

W. R. Kennedy, for the respondents.

The arguments and authorities cited will appear in the judgment.

Cur. adv. vult.

FIELD, J. (on March 11), delivered judgment.—The question for our determination, which is whether the complaint was made within the period of time prescribed by Jervis's Act—that is, within six months from the time when the matter of the complaint arose—depends upon section 23 of the Highways and Locomotives Act, 1878: [reads]. It appears from that section that the highway authority have first to prove the damage, then to obtain the certificate of their surveyor that extraordinary expenses have been thereby incurred, and then they may proceed to recover the amount.

It was first contended on behalf of the respondents that the period of limitation ran from the date of the completion of the damage, but this is clearly not the intention of the Legislature. In some cases, such as assault, the period of limitation would, no doubt, date from the doing of the act, but here the circumstances are widely different. The highway board have duties to perform extending over a large district, and it follows that it is difficult at first to ascertain in what particular part of the district the damage has been caused. Moreover the expenses recoverable are not the expenses incurred by the actual damage caused, but a proportionate part, representing the excess over the average expenses of repair; it would be unjust to charge the party occasioning the damage with the whole expense of reinstating the road. It seems clearly not to be intended that the period of limitation is to commence from the date of the completion of the damage. In addition to this the Legislature has, for some purpose, interposed the certificate of the surveyor as a condition precedent to the right of the highway authority to recover these expenses. After that condition has been fulfilled, I am at a loss to see what other limitation is to be interposed.

It was contended, however, on behalf of the appellants that the period of limitation was to be reckoned from the date of the demand, and in support of the argument on

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this point the case of *Labalmondiere v. Addison* (3) was cited. But in that case the decision of the Court proceeded upon the peculiar character of the subject-matter. The public authority called on the owner to take down and secure a certain structure, certified to be in a dangerous state; the owner having failed to comply with this requisition, the public authority themselves executed the work, and then demanded of the owner repayment of the expenses; on the construction of that Act the Court, inasmuch as the owner could not know what to pay until the work was done, not unnaturally held that no liability accrued until the demand was made. The other case which was cited, *Grece v. Hunt* (4), is not an authority in point; the question, which turned upon the construction of the Public Health Act, 1848, and the Local Government Act, 1858, was whether section 62 of the latter Act applied to the summary proceeding under the former Act, and the Court held that it did.

It would be a strong thing to hold that the period of limitation does not commence until the demand, when it would be in the power of the highway authority by delaying the demand to postpone the matter for an indefinite period. We have come to the conclusion that the period of limitation does not date from the damage nor from the demand, but from the certificate of the surveyor. The Legislature has said in effect that the matter of complaint arises when the certificate of the surveyor is given; the highway authority have then done all that they are required to do, and we therefore hold that the six months' period of limitation runs from that time.

BOWEN, J.—I am of the same opinion, and I only add a few words in order to contribute one argument to those which have been advanced by my brother Field. Those who say that the demand is the cardinal moment from which the period of limitation commences, must maintain that a demand is a condition precedent to the right to recover the expenses by summary proceedings. Assume, then, that the certificate of the surveyor is given to the effect that the extraordinary expenses incurred

amount to 100*l.* The highway authority has to form its own judgment as to how much it will demand—assume it demands from A 80*l.* A has the power of disputing his liability before the Justices, it is so contemplated by the Act. Assume that he appears and succeeds in reducing the amount to 60*l.*, can any one doubt but that this amount can be recovered? and, if so, where is the necessity of a demand? The original demand was for 80*l.*, and every lawyer knows that a demand for a larger sum will not do for a demand for a less sum. For this reason, in addition to those that have been stated by my brother Field, I have come to the conclusion that the period of limitation dates from the certificate of the surveyor.

Appeal dismissed.

Solicitors—Gregory, Rowcliffes & Co., agents for Bremner & Co., Liverpool, for appellants; W. W. Wynne & Son, agents for Simpson & North, Liverpool, for respondents.

[CROWN CASE RESERVED.]

1882. }
March 11. } THE QUEEN v. ROWLANDS.*

The Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13. sub-s. 3—Removal of Property with intent to defraud Creditors—Fraud on Single Creditor.

The provisions of section 13 of the Bankruptcy Act, 1869 (32 & 33 Vict. c. 62), s. 13. sub-s. 3, apply to all persons whether subject to the bankruptcy laws or not.

A, B and C were convicted on an indictment under section 13, sub-section 3 of 32 & 33 Vict. c. 62, of removing the property of A, since the date of an unsatisfied judgment or order for the payment of money against A, with intent to defraud the creditors of A.

It was proved that a judgment had been obtained against A, and that while it was still unsatisfied, he, with the help of B and C, removed property from his house in order to defeat the judgment creditor.

There was no evidence that A had any

* *Coram* Lord Coleridge, C.J.; Denman, J.; Stephen, J.; Mathew, J.; Cave, J.

(3) 1 E. & E. 41; 28 Law J. Rep. M.C. 25.

(4) 46 Law J. Rep. M.C. 202; 2 Q.B.D. 389.

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other creditors, or that there was any intention to defeat the claims of any other creditors of A, except the said judgment creditor.

No petition in bankruptcy had been presented against A, nor had any proceedings been taken for the arrangement of his affairs by liquidation or composition:—

Held, that the absence of any proceedings in bankruptcy against A was immaterial; but that the conviction could not be sustained, inasmuch as an intent to defraud creditors was charged but was not proved.

Semble that an intent to defraud one creditor may be evidence from which a jury may infer an intent to defraud all within the meaning of section 13.

CASE reserved by the chairman of the Carmarthenshire Sessions.

David Rowlands, John Williams and John Williams were tried before me upon an indictment framed upon the 3rd subsection of the 13th section of the 32 & 33 Vict. c. 62 (1).

It was proved that a judgment had been recovered in the County Court, upon the 8th of November, 1881, against David Rowlands, for 18*l.* 4*s.* 8*d.*, which judgment was unsatisfied at the time of the trial. It was further proved that upon the night of the same day upon which judgment had been recovered, Rowlands, with the assistance of the two Williamses, removed his goods under circumstances which justified the conclusion at which the jury arrived, that the removal was effected with the object of defeating and delaying the execution creditor from obtaining the fruits of his judgment.

It was proved that after the removal of the goods on the 8th of November, David Rowlands' house was shut up, and that the bailiff of the County Court endeavoured to serve two summonses upon him, but was not able to effect service.

It was objected by counsel for the pri-

(1) Section 13 of 32 & 33 Vict. c. 62, enacts: "Any person shall in each of the cases following be deemed guilty of a misdemeanour . . . (a) If he has, with intent to defraud his creditors, concealed or removed any part of his property, since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him. . . ."

soner that the words "any person" in section 13 must be read in connection with the words of section 11 and section 12, and that a person to be liable under the 13th section must be either a bankrupt or have liquidated his affairs by arrangement.

It was further objected that there was no evidence of any intention to defraud creditors generally, and that the intent to defeat and delay a particular creditor did not satisfy the words of the 3rd subsection of section 13.

I overruled both objections, and left the question of intention to defraud the creditors to the jury, who convicted all the prisoners.

The question for the opinion of the Court is, whether I ought to have decided in favour of either of the above objections.

No counsel appeared.

LORD COLERIDGE, C.J.—I am of opinion that this conviction must be quashed. The indictment was framed under subsection 3 of the 13th section of the Debtors Act, 1869, which is a statute for the abolition of imprisonment for debt, and for the punishment of fraudulent debtors. Although it was passed at the same time as the Bankruptcy Act, it is a separate and independent Act, dealing no doubt with cases in which the fraudulent debtor has become subject to the law of bankruptcy, but not with those cases alone. There is nothing, therefore, substantial in the first objection taken—that the prisoner has not become a bankrupt, and that his affairs are not in liquidation. The offence charged is quite independent of bankruptcy; other sections apply only to cases of bankruptcy or liquidation. This one is not so restricted; it applies to "any person," whether bankrupt or not.

With regard to the second objection raised on behalf of the defendants, it is to be observed that the indictment in each count charges the defendants with removing the property with intent to defraud creditors, not to defraud a creditor. I abstain from saying that an indictment could not be framed under this section, upon which a person might be convicted, although all that could be proved against him was an attempt to defraud one creditor. It may be that the fact of a removal in-

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tended to have the effect, and having the effect of delaying and defrauding a creditor, might have afforded evidence for the jury of an intent to defraud creditors, but the case was not so left to or considered by the jury. Evidence sufficient to establish an intent to defraud a particular creditor might not warrant the inference of an intent to defraud creditors. The attention of the jury was not directed to this distinction; and as the direction of the chairman was thus insufficient, the conviction cannot be upheld.

DENMAN, J.—The section under which this indictment was framed is in Part 2 of the Debtors Act, the heading of which is "Punishment of Fraudulent Debtors." I think this fact assists us in coming to the conclusion that the section applies not only to bankrupts but to all fraudulent debtors. With regard to the second objection, I think it would be wrong for the Court to decide, without having heard argument, that there might not be a case in which defrauding a particular creditor might afford evidence of intention to defraud creditors generally. In the present case there is nothing from which the Court can infer an intent to defraud creditors generally as specially alleged in the indictment.

STEPHEN, J.—I am of the same opinion. I think it is clear from the general course of legislation that the present sub-section was intended to apply generally, and not merely to bankrupts and liquidating debtors. With regard to the second objection, the conviction may possibly be right; but I agree that it ought to be quashed, on the narrow special ground that the statement of the case does not make it clear whether the chairman properly left the circumstances to the jury.

MATHEW, J.—I am of the same opinion. It seems to me that the chairman decided as a matter of law what ought to have been left for the opinion of the jury.

CAVE, J., concurred.

Conviction quashed.

1881. }
Nov. 30. }

GALLOWAY v. MARIES.

Betting Act (16 & 17 Vict. c. 119), ss. 1 and 3—"House, Office, Room or other place"—Movable Box within Ring at Races.

On the hearing of a summons taken out under 16 & 17 Vict. c. 119, it was proved that the defendant stood on a wooden box, in an enclosed space on a racecourse, commonly known as "The Ring," and there made bets and received money in payment of the same. The Justices dismissed the summons, on the ground that the defendant had not been guilty of the offence of occupying "a place," within the meaning of section 3 of the Betting Act, for the purpose of betting:—Held (on appeal), that the summons was wrongly dismissed, as the wooden box in question was a "place" within the meaning of that section.

This was a Case stated by Justices of Sutton Colfield, under 20 & 21 Vict. c. 43.

It appeared from the case that the respondent, during each day of a race week, stood on a box in the ring, and there made bets and received payment in respect of the same. The box was not fixed to the ground, and there was no tent, umbrella or other distinguishing mark of the respondent's position likely to attract attention. A summons was taken out against the respondent, under 16 & 17 Vict. c. 119 (1), and on the hearing the Justices dismissed the summons, on the ground that the box on which the defendant stood could not be said to be "a house, office, room or other place" within the meaning of sections 1 and 3 (1).

This decision was appealed against.

(1) 16 & 17 Vict. c. 119. s. 1: "No house, office, room or other place shall be opened, kept or used for the purpose of the owner, occupier or keeper thereof, or any person using the same or any person procured or employed by or acting for or on behalf of such owner, occupier or keeper, or person using the same, or of any person having the care or management or in any manner conducting the business thereof betting with persons resorting thereto; or for the purpose of any money or valuable thing being received by or on behalf of such owner, occupier, keeper or person as aforesaid as or for the consideration for any assurance, undertaking,

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Bosanquet, for the appellant, contended that the box in question did not materially differ from the stool and umbrella, decided in the case of *Bows v. Fenwick* (2) to be a place within the meaning of section 3 (1), as it was an "ascertained and fixed spot." It is not necessary that "fixed" should mean fixed to the earth.

[*LOPES, J.*—But *Bramwell, L.J.*, in *Doggett v. Catterns* (3) rests his decision on the fact that the spot in question was not sufficiently fixed.]

Shaw v. Morley (4) shews that fixity to the soil is not necessary. In the case of *Haigh v. The Corporation of Sheffield* (5)

promise or agreement, express or implied, to pay or give thereafter any money or valuable thing on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise, or as or for the consideration for securing the paying or giving by some other person of any money or valuable thing on any such event or contingency as aforesaid; and every house, office, room or other place opened, kept or used for the purposes aforesaid, or any of them, is hereby declared to be a common nuisance and contrary to law."

Section 3: "Any person who being the owner or occupier of any house, office, room or other place, or a person using the same, shall open, keep or use the same for the purposes hereinbefore mentioned, or either of them; and any person who, being the owner or occupier of any house, room, office or other place, shall knowingly and wilfully permit the same to be opened, kept or used by any other person for the purposes aforesaid, or either of them, and any person having the care or management of or in any manner assisting in conducting the business of any house, office, room or place, opened, kept or used for the purposes aforesaid, or either of them, shall, on summary conviction thereof before any two Justices of the peace, be liable to forfeit and pay such penalty not exceeding 100*l.* as shall be adjudged by such Justices, and may be further adjudged by such Justices to pay such costs attending such conviction as to the said Justices shall seem reasonable, and on the non-payment of such penalty and costs, or in the first instance if to the said Justices it shall seem fit, may be committed to the common gaol or house of correction, with or without hard labour, for any time not exceeding six calendar months."

(2) 43 Law J. Rep. M.C. 107; Law Rep. 9 C.P. 339.

(3) 17 Com. B. Rep. N.S. 669; 19 *ibid.* 765; 34 Law J. Rep. C.P. 159.

(4) 37 Law J. Rep. M.C. 105; Law Rep. 3 Exch. 137.

(5) 44 Law J. Rep. M.C. 17; Law Rep. 10 Q.B. 102.

the only difficulty was the largeness of the alleged place; but large plots of land have been declared to be places within the meaning of the statute, *e.g.*, a pigeon-shooting ground—*Eastwood v. Mellor* (6)—and a cricket field—*Haigh v. The Corporation of Sheffield* (5). The decisions of the Judges go to this, that you shall not open a place of resort, and that the word "place" in sections 1 and 3 is not *ejusdem generis* with the preceding words, but means a place used for a similar purpose. It might be almost contended that the ring is a "place" within the statute, but the difficulty is that it is not used exclusively by any one, nor is the betting so connected with the man who takes the money for the use of the ring that he can be said to use it for the purposes of betting.

The respondent was not represented.

GROVE, J.—I am of opinion that the decision of the magistrates cannot be upheld. They decided that the wooden box on which the respondent stood was not a place within the meaning of 16 & 17 Vict. c. 119. s. 1 (1). The question left to our decision is not happily put—as the box itself cannot be a place—but the question really is, whether the fact that this box was kept in one place for the whole duration of the races constituted it a "place" within the Act?

The facts of the case are: that two persons, advertising not by printing but by their voices, stood one on a wooden box in the ring, not fixed to the ground, and one at the side of it, and remained in the same place in an enclosed space, there offering to make and making bets with others. The statute says this after the preamble: [His Lordship then read section 1.] And the words "resorting thereto" are by no means unimportant. Similar words are used in section 3, and a penalty is affixed to any contravention of the Act. I am of opinion that this box, which was continuously placed on a certain spot in an enclosed space, did in fact constitute a "place" within the meaning of the Betting Act. Unfortunately, no counsel appeared for the respondent, but no doubt it would have been argued for him that the word "place"

(6) 43 Law J. Rep. M.C. 139; Law Rep. 9 Q.B. 440.

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must be read as being *ejusdem generis* with the preceding words "house, office, room or other place," and that this box being movable, though not in fact moved, could not be such a place. Some of the cases in support of this are strong, and have still more force if we look at the preamble to the Act, but they are not decisive that way; whereas the cases of *Shaw v. Morley* (4), *Bows v. Fenwick* (2) and *Haigh v. The Corporation of Sheffield* (5) point more strongly the other way. In *Bows v. Fenwick* (2) the appellant had a stool, a less unusual thing than a box, but above this he had a large umbrella, with "G. Bows, Victoria Club, Leeds," printed on it in large letters—which constituted a temporary covering with words of advertisement thereon—and, moreover, a card was exhibited, on which was printed, "We pay all bets first past the post." In this case the advertisement was oral, but this difference does not in my opinion aid us in determining whether this was a "place." There was, however, in that case a more important difference, for there the umbrella was fixed to the ground by means of a spike, and on this fact the Court in their judgment laid much stress as denoting fixity of place. Lord Coleridge, in his judgment, distinguishing the case of *Doggett v. Catterns* (3), says that in that case "there was no ascertained place within the ambit of the park in which the appellant carried on his avocation. Without therefore quarrelling with the decision of the Exchequer Chamber, which does not at all interfere with our present judgment, we find in *Shaw v. Morley* (4) a case exactly on all fours with the present. . . . There is a sufficient fixity of the structure, by means of the spiked umbrella, to bring the case within the words of the Act as it is clearly within the mischief." I think the ground of the decision of Lord Coleridge was that the place was fixed, and the umbrella was only considered as indicating a place to the public around. This we see from the language. "The thing described," he says, "was clearly not a room, and the question remains, was it an office or other place. Possibly it might be said to be in some sense an office, but I am of opinion that at all events it was a place."

Now in this case the box is clearly within

the definition enunciated by Lord Coleridge—that is to say, it was "an ascertained spot where the person making the bets carried on, at least for the time, the business of betting with all persons who might resort thither for that purpose." In deciding that case, I think Lord Coleridge did not hold that the inscription on the umbrella and the card in themselves constituted the umbrella a place within the Act, but that they "indicated a fixed and ascertained place." This fixity of the place was the ground of the decision, and the umbrella was only important as indicating that. I think this would be seen if one were to enter on the question, whether Lord Coleridge would have come to the same conclusion if some other mode of calling the attention of the public were adopted. And this fixity need not be absolute, as in the case of fixtures, so long as there is sufficient stay in one place for the betting public to know where persons desirous of betting may be found.

But our decision does not rest on that case alone. There is a case of *Shaw v. Morley* (4), in which a strip of ground in which there were small divisions, and in each division a movable desk, was held to be "an office" and "a place" within the meaning of the Act, and Chief Baron Kelly expressly held that the absence of a roof made no difference. This strengthens my opinion that, in the case of *Bows v. Fenwick* (2), the umbrella was only important as indicating fixity and an ascertained place. The case of *Doggett v. Catterns* (3) was decided in the same way by the Court of Common Pleas; but their decision was reversed in the Exchequer Chamber, not, however, on grounds lessening the force of the two former cases, but rather for reasons strengthening them. In that case the bets were made under a tree in Hyde Park, and the Court decided the case, on reasons distinguishing it from the other cases, in such a way as to confirm my view that this is "a place" within the Act. Chief Baron Pollock said: "The opinions of the learned Judges in the Court below proceed on the ground that the spot in which the defendant exercised his calling was 'a place' within section 3 of the statute, and I concur in that view, so far as I think the place being an open one, and not being a

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'house,' 'office' or 'room,' would not alone prevent it from being a place within that section." So, according to the decision of the Lord Chief Baron, a mere spot, although not a "house, office or room," was capable of being a place within the Act; but that it must be capable of having an owner, which the spot in question was not, for there was no fixity of tenure, and the crowd might have pushed him away at any moment. Two other Judges agreed with the Lord Chief Baron, and for the same reasons. Baron Bramwell said: "I agree that the judgment should be reversed, but not on the ground that a person, to come within sections 4 and 5 of the statute, must be an owner or occupier of the place, or a person acting on behalf of the owner or occupier. The object of the statute was to put down ascertained places of resort for gambling. I think the place in question was not a place of that sort within the contemplation of the Act."

I think that in this case there was an ascertained place of resort for gambling, and also that it was capable of having an owner or occupier, if that were necessary to my decision. In *Haigh v. The Corporation of Sheffield* (5) a cricket field, let by the temporary owner for the purpose of betting to persons who had chairs dotted over the ground, which were capable of being moved about within the ambit of the cricket ground, was held to be a "place" within the meaning of section 3. All the cases go to this point therefore, that to be a "place" within the Act the spot in question must be a fixed and ascertained place. And the real *ratio decidendi* is to ask, Is this a spot occupied or used so far permanently that it may be known that there is a person who stands in a particular spot indicated by a certain definite mark with whom bets may be made? I do not decide whether a person standing on a spot, however slightly marked, as by a circle cut in the turf or a heap of stones, would be within the Act if he offered to bet there; but in this case I am of opinion that this was a place within the Act.

As regards the contention that the words "or other place" are *ejusdem generis* with the foregoing words, this is doubtless the general rule, but each case must be construed with respect to its peculiar circumstances,

and "other place" may be accordingly construed more or less widely. The statute in question aims at putting down gambling, and preventing persons having fixed localities to which others intending to gamble may "resort." I think that in this case the words are not to be restricted to the preceding enumeration of various kinds of "places," and that therefore the decision of the Justices must be reversed.

LOPES, J.—Although I had some hesitation as to whether the facts of this case came within the words of the Act, I had none that they came within the mischief of it. The question is, therefore, it seems to me, do those facts constitute such a state of things as to shew that the respondent was using a "place" within the meaning of the provisions of the Betting Act in contravention of that Act? My first difficulty was that, apart from authority, it seemed necessary to construe the words "other place" as meaning other place of a like nature to "house, office or room." But that difficulty has been removed by the cases cited, in which the word "place" has been held to include such a place as a cricket ground, and even a place set apart for pigeon shooting. The next difficulty was that which I felt in saying a wooden box like this is within the meaning of this Act, which was passed to put down betting-houses. But in this also my difficulty is removed by the authorities cited, the strongest of which is *Bows v. Fenwick* (2), which goes farther than the others. The expressions used by Lord Coleridge, Lord Justice Brett and Mr. Justice Denman go this length, that any piece of ground appropriated by a person offering to take bets is a "place" within the meaning of the statute. I am satisfied that this case is within the principle of *Bows v. Fenwick* (2), and that, therefore, the decision of the Justices should be reversed.

Decision reversed, and case remitted to the Justices.

Solicitors—F. N. Needham, agent for Dale & Vachell, Birmingham, for appellants.

[IN THE COURT OF APPEAL.]

1882. { THE BOARD OF WORKS OF
 April 20, 21. { THE HACKNEY DISTRICT
 v. THE GREAT EASTERN
 RAILWAY COMPANY.*

Metropolitan Management Acts—18 & 19 Vict. c. 120. s. 105—25 & 26 Vict. c. 102. s. 77—Expenses of Paving New Street on Bridge with Side Walls belonging to Railway Company—Liability of Company as Owner of Land bounding or abutting on a Street.

A railway company built over its line of railway a bridge with side walls supported by piers standing on the slopes of the cutting through which the line ran. A road was carried over this bridge, which became a new street within the meaning of the Metropolitan Management Acts. The district board of works paved this street, and called on the railway company to contribute to the expenses of this paving, on the ground that it was an "owner of land bounding or abutting on such new street," and therefore liable so to contribute :—Held, that the railway company was liable, that the bridge belonged to it, and that the side walls of the bridge were land bounding or abutting on the new street within the meaning of section 77 of 25 & 26 Vict. c. 102.

CASE stated by a Metropolitan police magistrate.

A summons was taken out by the Board of Works of the Hackney District to recover from the Great Eastern Railway Company a sum of 74*l.* 2*s.* 8*d.*, ordered to be paid by virtue of an order of apportionment made by that Board of Works in respect of the cost of paving the new street or road, known as Cazenove Road, Stamford Hill, in respect of the bridge or land in the occupation of the railway company, situate in said road.

The magistrate dismissed the summons, and on the application of the Board of Works (the appellants) stated a Case, the material parts of which were as follows :—

"The respondents, under powers conferred upon them by an Act of Parliament, built a bridge carrying Cazenove Road

over their line of railway, which is in a deep cutting."

The sum of 74*l.* 2*s.* 8*d.* was demanded as the contribution of the railway company as the owner for a frontage of the line of railway on the south side of 44 feet 8 inches, and on the north side of 48 feet.

"The road carried over the line of the respondents crosses it, running east and west on a bridge, which is supported on stone piers, erected by the railway company upon the slope of the cutting on either side of the line."

"No portion of the land of the respondents in respect of which it is sought to charge them is or can be used for any other purpose than for their railway."

"It was contended by the respondents that they were not owners of land bounding or abutting upon the road within the meaning of the Acts."

"I was of opinion that the facts were the same (except that I found the road to be a new street) as in the case of *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1), and that the respondents were not the owners of land bounding or abutting on the road within the meaning of the Acts."

"The question for the opinion of the Court is whether the respondents are liable to pay the sum demanded to the applicants."

The Queen's Bench Division, following the judgment in *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1), gave judgment for the railway company, but gave leave to appeal.

The Board of Works appealed.

Sir H. Giffard, Q.C. (with him *Poland*), for the appellants.—The question is whether the railway company, whose line passes in a cutting under the road, which there is carried over a bridge with a parapet wall on each side, is liable to contribute the expenses of paving a new street, as being the owner "of land bounding or abutting on such street." Section 105 of the Metropolitan Act, 1855 (2) renders the owners

(1) 48 Law J. Rep. M.C. 184; Law Rep. 4 Ex. D. 239.

(2) 18 & 19 Vict. c. 120. s. 105: "In case the

* *Coram* Baggallay, L.J.; Brett, L.J.; and Holker, L.J.

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of houses forming a street liable to contribute to the expenses of paving a new street, and section 77 of the Metropolitan Management Act, 1862 (3), imposes the

owners of the houses forming the greater part of any new street laid out or made, or hereafter to be laid out or made, which is not paved to the satisfaction of the vestry or district board of the parish or district in which such street is situate, be desirous of having the same paved as hereinafter mentioned, or if such vestry or board deem it necessary or expedient that the same should be so paved, then, and in either of such cases such vestry or board shall well and sufficiently pave the same, either throughout the whole breadth of the carriage way and foot-paths thereof or any part of such breadth, and from time to time keep such pavement in good and sufficient repair; and the owners of the houses forming such street shall on demand pay to such vestry or board the amount of the estimated expenses of providing and laying such pavement (such amount to be determined by the surveyor for the time being of the vestry or board); and in case such estimated expenses exceed the actual expenses of such paving, then the difference between such estimated expenses and such actual expenses shall be repaid by the said vestry or board to the owners of houses by whom the said sum of money has been paid; and in case the said estimated expenses be less than the actual expenses of such paving, then the owners of the said houses shall on demand pay to the said vestry or board such further sum of money as together with the sum already paid amounts to such actual expenses."

(3) 25 & 26 Vict. c. 102. s. 77: "Where any vestry or district board shall, under powers given by the 105th section of the firstly recited Act, have paved, or be about to pave, any new street, the owners of the land abounding or abutting on such street shall be liable to contribute to the expenses or estimated expenses of paving the same, as well as the owners of houses therein, provided that it shall be lawful for the vestry or district board to charge the owners of land in a less proportion than the owners of house property, should they deem it just and expedient to do so; and any such costs or expenses, including the cost of paving at the points of intersection of streets, and all such incidental costs and charges, shall be apportioned by the vestry or board, and shall be recoverable either before the work shall be commenced, or during its progress, or after its completion; and it shall be lawful for the vestry or district board, at their discretion, to accept payment of the amount apportioned or charged in respect of each house or premises by instalments spread over a period not exceeding twenty years, and any such amount shall be recoverable from the present or any future owner of the

same liability upon the owners of land bounding or abutting on a new street. The Case states that this is a new street, and it is submitted that the railway company, which owns the land through which the cutting has been made, and which also owns the bridge, is liable to contribute to the expenses of paving this new street. Section 77 (3) provides that owners of land may be charged in a less proportion than the owners of house property, and the burden is not a recurring burden, it is imposed once for all, so that there is no hardship in the enactment. The railway company owns everything which abuts on this part of the road; it has made a cutting, but the land on which the rails are laid still abuts on the street, and the fact that it lies at a lower level makes no difference; the buttresses and the parapet walls also abut on the new street, so that the company is liable to pay the sum demanded. *The London and North Western Railway Company v. The Vestry of the Parish of St. Pancras* (4) supports this argument, for it was there decided that a railway which ran in a cutting 18 feet 9 inches below the level of the street bounded the street within the meaning of this Act. *Higgins v. Harding* (5) decided that an open space at the foot of a railway embankment was land within this Act, and so liable to contribute to the expenses of paving a new street. In *Arnett v. The London and North Western Railway Company* (6) it was held that a railway company was liable to be rated for walls on each side of a bridge over the railway. Reliance may be placed by the railway company on the decision in *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1); but as the Court there held that the road in question was not a new street within the meaning of the Act the rest of the judgment becomes immaterial, and can only be considered as *obiter dictum*. This road is

premises, either by action at law or in a summary manner before a Justice of the peace, at the option of the vestry or board."

(4) 17 Law Times, N.S. 654.

(5) 42 Law J. Rep. M.C. 31; Law Rep. 8 Q.B. 7.

(6) 20 Law Times, O.S. 80.

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a street, it rests on the bridge, which is the property of the railway company, and the bridge rests on land belonging to the company, and must itself be considered as land, and the company therefore is liable to contribute to the expenses of paving this street. The company might build houses on arches, as has been done in Westminster Bridge Road, or as is the case at the Holborn Viaduct, so that the question of level must be immaterial.

Charles, Q.C., and French, for the railway company.—The authorities cited do not tell against the contention of the railway company, for *The St. Pancras Case* (4) only decided that a landowner whose land abuts on a street cannot relieve himself from liability by building a dead wall without any means of communication with the street along the front of his property, the question there was whether non-access to the street relieved the landowner of liability. *Higgins v. Harding* (5) is in favour of the railway company, for if the contention of the appellants were correct the railway company would in that case have been rated for the span of the arch; and the decision in that case only amounts to this, that where land physically touches the street it is then liable to contribute. The land of this railway company does not either bound or abut on the new street, for the level of the line itself is far below the street, and a street does not go down to the centre of the earth, as only a limited quantity of land can be said to form the street—*Coverdale v. Charlton* (7). The road under which this line of railway goes is a highway, and the company was obliged to make this bridge by 8 Vict. c. 20. s. 46 (8), but the bridge and the walls

do not belong to the company, although they have to repair them.

[BRETT, L.J.—Surely the bridge must belong to the railway company?]

[*Sir H. Giffard*.—At one time it was believed that the road in question was a highway, but it is now stated by the parish surveyor that it was not one.]

The railway company believes that it was a highway, and it is hardly likely the company would have made this bridge had it not been one. The railway company put walls to the bridge to prevent the possibility of an indictment for a dangerous nuisance; but these walls cannot constitute the company a landowner whose land bounds or abuts on the street. The walls are not built on land such as is contemplated by section 77 (3), for it is not land available for use, and so it cannot be treated as land liable to this assessment. Land in the statute in question is land limited both in height and depth, and cannot be held to refer to land lying at a level far below the street.

[BRETT, L.J.—Take the case of Old London Bridge, on which houses stood, might not this company build a wide bridge with houses on either side or with a covered station, and would these not be liable to assessment? BAGGALLAY, L.J.—Does not the Thames bound the roadway which runs on the embankment?]

In the case of London Bridge there was land which could be put to available use.

If this road was a highway, then the railway company was bound to build the bridge, and it is bound to maintain it, its approaches and all necessary works at all times thereafter; in this is included not only the structure of the bridge, but also the metalling of the road—*The North Staffordshire Railway Company v. Dale* (9); and if the company is bound to make, to metal and at all times to repair this road or street, then it cannot be liable to contribute to the expenses incurred by the

expense of the company; provided always, that with the consent of two or more Justices in petty sessions as after mentioned, it shall be lawful for the company to carry the railway across any highway other than a public carriage road on the level."

(9) 8 E. & B. 836; 27 Law J. Rep. M.C. 147.

(7) 48 Law J. Rep. Q.B. 128; Law Rep. 4 Q.B. D.

(8) 8 & 9 Vict. c. 20. s. 46: "If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act), either such road shall be carried over the railway, or the railway shall be carried over such road, by means of a bridge of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches and all other necessary works connected therewith, shall be executed, and at all times thereafter maintained at the

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Board of Works in paving this street, for the duty of the railway company, which is defined by the Railways Clauses Act, cannot be varied or increased by the action of the Board under the Metropolitan Management Acts. This bridge is not now the property of the company, for it has been declared to be a street, and the word "street" includes, by the interpretation clause in section 250 of 18 & 19 Vict. c. 120, "any road, bridge, not being a county bridge"; so that the whole bridge has become a street, and has passed out of the ownership of the railway company.

Cur. adv. vult.

BAGGALLAY, L.J. (on April 21).—The question raised on this appeal is, whether the Great Eastern Railway Company is liable to contribute to the expenses of paving a certain street. Cazenove Road is a new street within the meaning of the Metropolitan Management Act, 1855, and it has been paved by the Board of Works for the district pursuant to section 105 of that statute (2). Under the combined operation of section 105 of the Metropolitan Management Act, 1855 (2), and section 77 of the Metropolitan Amendment Act, 1862 (3), the parties liable to contribute are the owners of the houses forming the street, and the owners of the land bounding or abutting on the street. In this case the railway company constructed its railway in a deep cutting at right angles to the road, and, under the powers of its Act, built a bridge across the railway. It is contended by the Board of Works that the railway company is liable to contribute to the expenses of paving a new street which is carried across this bridge, on the ground that it owns land which bounds or abuts on the new street; the railway company denies that its land does so bound or abut, and further contends that, as by the operation of the Railway Clauses Consolidation Act (8), it is obliged to maintain the bridge and the road over it, there can therefore be no liability on the company to contribute to the expenses of paving the street itself.

The Case stated by the magistrate states, in paragraph 2, that "the respondents'

(that is, the railway company), "under powers conferred on them by an Act of Parliament, built a bridge, carrying Cazenove Road over their line of railway, which is in a deep cutting." And in paragraph 4, it is stated that "the road carried over the line of the respondents, crosses it, running east and west, on a bridge, which is supported on stone piers erected by the railway company upon the slopes of the cutting on either side of the line." The magistrate held, on a summons taken out, that the railway company did not own land within the meaning of the statute, and he also found as a fact that the road in question was a new street. We have looked at photographs of the *locus in quo*, which have been referred to by both parties to this appeal, and I have derived material assistance from them. It appears that there is an open path leading from the road to the line of the railway company, and it is admitted that the company is liable to be assessed for that pathway; but then there are also side walls to the bridge, and these stand on an under-structure carried down to land which belongs to the railway company. It seems to me that these walls so standing on these buttresses are all land, that the land at the bottom of the structure has on it the arch and the stone-work which supports the bridge on which the street is laid. Now this is the street which the board has paved, and this street is bounded by these walls, which stand on land belonging to the railway company, so that they are themselves land which the railway company owns. Some stress has been laid in argument on the decision of the Exchequer Division in *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1). If in the present case the whole of the bridge were the street, if there were no walls such as exist in this case, then the present case would doubtless resemble that to which I have referred. It appears that the magistrate felt himself bound by that case, and that it was not attempted to distinguish the two cases either before him or in the Divisional Court; so that the Divisional Court formally approved the judgment of the magistrate, and gave leave to appeal.

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I do not consider it necessary to say what opinion I should form if the whole of the bridge were the street, and if there were no such walls as exist in this case; I do not say that I should then follow the decision in the case of *The Brighton Railway Company v. St. Giles, Camberwell* (1). There is doubtless much which might be urged on the other side; but there is a clear distinction between that case and the present case.

Then it was further argued on behalf of the railway company that, as it is obliged by section 46 of the Railway Clauses Consolidation Act (8) to repair the bridge, the approaches and all other necessary works connected therewith, the company could not be liable to contribute to the expenses of paving this street. I am not able to follow that argument, and I have some difficulty in appreciating it. It does not appear to me that an owner of land who is supposed to derive some benefit from the construction of a street, and who is therefore called on to contribute to the expenses of paving that street, can be relieved from that liability by a provision in a statute which imposes on him a liability to repair from time to time the bridge on which that street is laid. It has been said that the Board of Works has by their action relieved the railway company of a portion of the expenses which would otherwise fall on it; but I am of opinion that we cannot measure the proportion between the two liabilities on one side or the other. If the railway company should be inclined to deny all liability to repair the bridge hereafter, it appears to me that it may have to consider well before it relies on this argument. I think that this appeal must be allowed; that the company is liable to contribute to the expenses incurred in paving this street, which the Case states was a street over the whole length of the bridge.

BRETT, L.J.—I am sorry that in this case we have not the advantage of having the opinion of the Judges of the Queen's Bench Division for our guidance. It appears that the Court considered that it was bound by the case of *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1); but

as the Court in that case held that the road was not a new street within the statute, the remainder of the decision was in fact *obiter*.

In the case now before us the railway runs in a deep cutting, over which the road is carried on a bridge; the Board of Works has treated the whole or part of this road as a street, and the magistrate has found as a fact that it is a new street within the meaning of the Metropolitan Management Acts. The Board resolved to pave it, and then called on the railway company to contribute to the expenses of paving the whole of the street, and that in respect of the whole length of the bridge from beginning to end. The question is whether the Board is entitled so to assess the railway company. The Board alleges that it is so entitled on two grounds. It alleges, in the first place, that it is entitled to assess the railway company in respect of the whole length of the bridge, because the company owns the land on which the buttresses which support the bridge are built, and also because the company owns the land on which the lines are laid on the low level below the bridge, so that, as the board alleges, land belonging to the company bounds or abuts on the street. The Board does not merely say that it can assess the railway company in respect of the land on which the buttresses stand, but it claims to assess the company in respect of the whole width of the land on which the rails are laid.

Further, the contention of the Board is that, supposing that the company cannot be assessed in respect of the land at the low level on which the rails are laid, still that the company is liable to be assessed in respect of the walls on either side of the bridge; for the Board contends that these walls are land belonging to the railway company and bounding or abutting on the street. With regard to the first contention, the Board have to contend that, even supposing the bridge not to belong to the company, and the buttresses not to belong to the company, and the buttresses not to stand on land belonging to the company, but supposing the company to own the low level land which touches the buttresses and which runs under the arch-

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way of the bridge, then the company owns the land on the low level, and that the Board would be entitled to assess it for that land in respect of the whole length of the bridge.

We have, therefore, to decide what is the true construction of the statute. The Act of 1855 (2) rendered houses alone liable to this assessment; the Act of 1862 (3) rendered land also liable. The earlier Act rendered owners of houses forming the street liable to contribute, whereas that liability is by the later Act imposed on the owners of land bounding or abutting on such street. My view is that the later statute applies to land which is in the same position with regard to the street as the houses were to which the first Act applies; so that I do not feel able to agree with the terms of part of the judgment of Mr. Justice Hawkins in *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1), as to such lands being liable which would have been liable under section 105 of the 1855 Act, had those lands been occupied by houses. That appears to me to be too narrow a construction of the statute. The land contemplated by the second Act must be, as it seems to me, land in the same position with regard to the street as the houses mentioned in the first Act, so that the words "forming such street," which we find in the earlier Act, are equivalent to the words "bounding or abutting on such street," which are in the later Act. If this be so, then the land lying at the low level would abut on the street; the question cannot depend on a mere degree of level, for land might lie at a level considerably lower than the street, and yet houses might be built upon such land which could only be approached from the street by steps or in some such way. I will not say whether such land would, if there were no houses on it, abut on the street—I will not say whether, to take an instance which has been referred to, Farringdon Street abuts on or bounds the street which runs on the Holborn Viaduct—for it is not necessary to decide this, and I decline to do so. It is sufficient to say that in this case the railway company owns land

within the meaning of the statute which bounds or abuts on the street for the whole length of the bridge. The street is on the bridge, but it is only the width of the roadway and the footway, the walls are not part of the street any more than the houses with their front walls are part of the street. What are these walls of this bridge? They are walls supported by permanent works fixed into the land which lies at the low level, or into the embankment on either side of the lines laid on that land, it matters not which—these works are fixed into the land, and these buttresses or supports are part of the land. It seems to me that the walls which are supported by the fixed building and also the walls where they pass over the span of the arch are all land within the meaning of this statute; if the whole of this street were taken up the bridge and the walls would remain, and they would be land, even though there was no street. Then whose is this land? This land consists of these walls, and they are built on land belonging to the company, and themselves belong to the company, for they are not part of the street. Now, if this be so, what relative position do these walls bear to the street? The case of Old London Bridge was put during the argument, and the counsel for the railway company admitted that the houses on that bridge must be considered as abutting on the street over that bridge; so also with regard to the Holborn Viaduct, there are, I believe, houses at each end of the viaduct, and there seems no reason why they should not be extended along both sides of the viaduct, in which case they would form a street. It is conceded that the frontage to the street is what we have to consider, and that the nature of the building or the width of the land is of no importance. These walls bound the street along the whole length of the bridge, so that the question of the land at the low level need not come into our consideration. If, indeed, the owners of land were rated according to the value of their land, then the question might arise whether these walls were of any value, but as the assessment is on the frontage alone, the question of value is wholly immaterial. I am,

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therefore, of opinion that the railway company is liable to be assessed in respect of the whole length of this bridge, because the walls belong to the company—walls which are equivalent to land, because they are built in a permanent manner upon land belonging to the company; and I do not stop to enquire whether this decision is or is not consistent with the case of *The London, Brighton and South Coast Railway Company v. The Vestry of St. Giles, Camberwell* (1).

The only remaining question is as to the point raised on behalf of the railway company to the effect that its liability under the Metropolitan Management Acts is cancelled by a duty imposed by the Railways Clauses Consolidation Act. I confess that I had great difficulty in following this argument; but I am of opinion that it is untenable. Assuming that what goes over the bridge is a new street, then it is clear that the Board has a right to pave it—this is expressly enacted; and the Board has also by the statute a right to call on the railway company to contribute to the expense. Is there, then, anything to do away with the *prima facie* right of the Board to do this? There is certainly no express provision that if the railway company is liable to repair before the Board paves the street, then that the company shall not be liable to contribute to the expense of paving when the Board does pave it. There can be no implied limitation to that effect unless the whole of the statute under which the railway company alleges this limitation is inconsistent with the *prima facie* right of the Board.

It is said that it is inconsistent because the railway company is bound to repair the road before it becomes a street; but that is not inconsistent with the right of the Board to pave the street, and then to call on the railway company to contribute. It is urged that we should now decide whether the railway company can be bound to repair hereafter this street thus paved; but I decline to do so now, for it will be time to do so when that case and that question come before the Court.

HOLKER, L.J.—It appears to me that the only question which it was intended should

be presented to the Court is whether the railway company does own land bounding or abutting on this street. It is confessed that the railway company owns some land which does so bound or abut, for it owns a path in respect of which it has paid a contribution to the expenses of paving the street in question. The company also owns the piers which support the walls, and the walls which form the parapets of the street. It is urged that the whole of the land of the railway company is land which abuts on this street; but I am of opinion that it is difficult to say that all the land on which the lines of rail are laid and the whole of the slopes of the cutting abut on the street, for the street does not, as it seems to me, extend down to the railway lines, but only extends downwards to a certain limited depth. It might be urged that the land in the centre of the line of railway bounds the street, and therefore comes within the statute; but I am not certain that this is so, nor is that the ground on which I decide that this appeal must succeed. The question is, does the railway company own land, taking that word in its legal sense, which abuts on or bounds this street? According to the authorities and by admission, it is of no importance whether the land is actually benefited by the paving or not, or whether the land can be used as sites for houses or not. It appears to me that it is clear from the statements in the case, as well as from the photographs, that the parapet walls are in a legal sense land which abuts on the street which has been paved. There is a decision in *The St. Pancras Case* (4) that in the case of a railway which ran at a depth of eighteen feet below a street, and where there was a wall separating the land of the railway from the street, the wall came within the statute, and that there was in that case property abutting on the street because the wall is a raised part of the land. It is admitted by the respondent railway company, that if these walls were solid from the top to the bottom they would then be land; so that the case is reduced to this narrow point, whether these walls are not land because they are not solid or continuous, and because one part is thrown

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across a chasm or cutting. Can it be said that the parapet walls, which rest on piers built on the slopes of the railway and borne on arches, are not land belonging to the railway company, when the supports are on the land of the company, and when the arch is constructed on the land of the company and overhangs land of the company? I asked whether, supposing that there were no arch, but that the walls were supported by pillars, the walls would then be considered to be built on the land of the company, and it was admitted they would, and that they would then be part of the land of the railway company, if so, why is not that the case here? The question then becomes one of degree only; suppose that a new street were built at a considerable elevation, and against it ran a viaduct of a railway, and that a series of arches and a wall bounded the new street, could it in such a case be said that only so much of the walls as rested on the piers was abutting on the land of the company? Surely not. These walls are, in my opinion, built on the land of the company, and are the property of the company. I think that this being so the walls are part of the land of the railway company, and are within the statute. As to the further point, I have nothing to add to what my colleagues have said, and I think the argument should not have been urged before this Court. The appeal, therefore, must succeed.

Appeal allowed.

Solicitors—R. R. Ellis, for appellants; C. A. Curwood, for respondents.

1882. }
April 4. }

REECE v. MILLER.

Jurisdiction of Justices—Reasonable Claim of Right—Tidal River—Fishery.

A mere claim by a man of a right to fish as one of the public, supported by very slight evidence, is not such a reasonable claim as will oust the jurisdiction of the Justices. A river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides.

This was a Special Case stated by Justices, and the questions therein raised were whether, under the circumstances, there was such a claim of right as would oust their jurisdiction, and also what was to be considered a tidal river. An information had been laid against the appellant for unlawfully fishing in a private fishery in the river Wye. It was proved that at the place in question the river was navigable, that the water was not salt, that the ordinary tides were not felt there; but that sometimes, when there was an unusually high tide, the fresh water coming down the river was dammed back by the tidal water below, and that accordingly the water would fall with the ebbing tide below. It was contended by the appellant that the Wye at the place in question was therefore a tidal navigable river, in which he, as one of the public, had a right to fish, and that the jurisdiction of the Justices was ousted by this, as he alleged, reasonable claim of right. The Justices, however, convicted the appellant.

Cripps, for the appellant, argued—first, that a river was tidal wherever the effect of the tide is clearly perceptible. The respondents admit that the river is navigable here, and the fact that the tide is from time to time felt, shews that it is a navigable and tidal stream. He cited *Horne v. Mackenzie* (1). Secondly, when a man fishes under a *bona fide* and reasonable claim of right, the Justices should refuse to exercise their jurisdiction and should not convict the claimant.

R. T. Reid, for the respondent.—There was no reasonable claim here: it was a mere

Reece v. Miller.

assertion of a right supported by the very slightest evidence, and the magistrates were therefore right in exercising their jurisdiction. A river is not tidal merely because the tide dams back the fresh water; there must be a regular ebb and flow of the tide.

He cited *Hale De Jure Maris* (2), *Bulstrode v. Hall & Stevens* (3) and *Malcomson v. O'Dea* (4).

Cripps, in reply, referred to *The Queen v. Burrow* (5).

GROVE, J.—I think that in this case there was not a reasonable claim before the magistrates, for the appellant claimed as one of the public, and he could only make such a claim if the river Wye was a tidal navigable river at the place where he was fishing. In support of his claim the only evidence which he brought forward as to the general exercise by the public of the alleged right was one witness, an old man of eighty-one, who said he had fished near the spot in question. Now this evidence really is valueless, and any evidence, to be worthy of consideration, should have been stronger and more detailed—for example, that the fishing had taken place openly and constantly. It was further proved before the magistrates that the water was not salt, and that generally it was not affected by any tidal influence, but that the tide dammed back the fresh water at very high tides. I think the words “a tidal river” have received a judicial construction. They were discussed in a recent case before us, and also in the case of *Musset v. Burch* (6). It is not a tidal river or stream where some portion of the water may be sometimes dammed back, but where the tide actually flows and reflows regularly. I know of no case where a river has been held to be a tidal river in which there has been only a backing up of the fresh water as in the present case. It is unnecessary that I should review the authorities which have been cited before us, for it seems sufficient to rely upon what Hale states upon the

subject, and the *dictum* of Baron Cleasby in *Musset v. Burch* (6) is to the same effect, as well as the cases of *Hudson v. MacRae* (7) and *Hargreaves v. Diddams* (8). I therefore hold that a tidal navigable river is one which must at ordinary times be both tidal and navigable. If this were not so there are many streams, the waters of which at exceptionally high tides may be kept back, on which coracles or small boats may be used, but which are not in the proper sense of the word tidal rivers. There was also very strong affirmative evidence in favour of the respondent, in the leases granted by the Duke of Beaufort of the river and of the user by his lessees. The evidence produced for the appellant on the other hand was not worth the consideration of the magistrates, and I do not think there was any reasonable ground on which the magistrates could hold that the appellant had made such a reasonable claim as would require them not to exercise their jurisdiction, but to leave the parties to their civil remedies. For these reasons the appeal must be dismissed with costs.

STEPHEN, J.—This case appears to me to be in a very narrow compass. The question seems simply whether the jurisdiction of the magistrates is ousted by the claim set up, which the claimant asserts to be a reasonable one, though he merely states that the Wye at the place in question is a navigable and tidal river, and supports his claim to fish as one of the public by the evidence of one old man. The case in the House of Lords—*Horne v. Mackenzie* (1)—to which we have been referred, and also that of *The Queen v. Burrow* (5) were quite different in their circumstances; and as I do not think there was such a reasonable claim as could oust the jurisdiction of the magistrates, the appeal must be dismissed with costs.

Solicitors—Saunders, Hawksford & Bennett, agents for James Corner, Hereford, for appellant; Roberts & Barlow, agents for James & Bodenham, Hereford, for respondent.

(2) *Hargreaves' Tracts*, pt. 1. ch. v. p. 17 *et seq.*

(3) *Sid.* p. 148.

(4) 10 H.L. Cas. 618.

(5) 84 *Justice of the Peace*, 53.

(6) 35 *Law Times*, N.S. 486.

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(7) 4 B. & S. 585; 33 *Law J. Rep.* M.C. 65.

(8) 44 *Law J. Rep.* M.C. 178; *Law Rep.* 10 Q.B. 527.

[CROWN CASE RESERVED.]

1881.
Dec. 10, 21. } THE QUEEN v. CONEY AND
1882. } OTHERS.*
March 18. }

Assault—Prize Fight—Aiding and Abetting—Evidence of.

The prisoners were indicted for a common assault. It was proved that the prisoners were in a crowd, which surrounded a ring, formed by ropes supported by posts, where a prize fight was going on; that they took no part in the management of the fight, and they neither said nor did anything. The jury were directed that prize fights are illegal, and that all persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are guilty in law of an assault; and that, if the persons indicted were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not do or say anything.

The jury found the prisoners guilty, but added that they did so in consequence of such direction of law, as they found that the prisoners were not aiding and abetting:—

Held (LORD COLERIDGE, C.J., POLLOCK, B., and MATHEW, J., dissenting), that the conviction must be quashed, as the direction of the chairman was incorrect. The mere voluntary presence of persons at a prize fight does not necessarily make them guilty of an assault, as aiding and abetting.

Held (by LORD COLERIDGE, C.J., POLLOCK, B., and MATHEW, J.), that a voluntary spectator at a prize fight, by his mere presence, must be deemed, in the absence of rebutting evidence, to be a person encouraging and aiding and abetting such fight, and therefore guilty of assault.

Held (by the whole Court), that the combatants at a prize fight, and all persons aiding and abetting therein, are guilty of an assault for which an indictment will lie.

CASE reserved by the chairman of the quarter sessions for the county of Berks.

* *Coram* Lord Coleridge, C.J.; Denman, J.; Pollock, B.; Huddleston, B.; Hawkins, J.; Manisty, J.; Lopes, J.; Stephen, J.; Mathew, J.; Cave, J.; and North, J.

1. The above-named prisoners, together with five other persons, were tried at the general quarter sessions for the said county, on the 18th of October, 1881.

2. They were charged on an indictment containing counts for unlawful assaults, riot and rout, &c. All the counts, except the seventh and eighth, were given up by the counsel for the prosecution, and the trial entirely proceeded upon the seventh and eighth counts, which alone are material to the case.

3. The seventh count charges all the prisoners, except Burke, with a common assault upon him. The eighth count charges all the prisoners, except Mitchell, with a common assault upon him.

4. It appeared in evidence that on the afternoon of the 16th of June, 1881, at the close of Ascot races, a witness who was proceeding along the high road towards Maidenhead, had his attention directed to some persons coming out of a plantation by the side of the road. He went into the plantation on private ground, and there saw, a few yards from the road, a ring of cord supported by four blue stakes. The prisoners Burke and Mitchell took off their coats and waistcoats, stripped and went into the ring. Six other persons, of whom a prisoner named Symonds was one, went into the ring, three into each corner. Burke and Mitchell fought from three-quarters of an hour to an hour.

Bets were offered by some of the persons in the crowd, which consisted of from 100 to 150 people.

There was no evidence that the fight was for money or reward, nor that any one tried to interrupt it.

5. In cross-examination it was elicited that it had been rumoured that two naked men were about to race.

6. Two witnesses deposed to seeing Coney and Tully in the crowd which surrounded the ring. They were not speaking, and were not seen to be betting or taking any part in the fight, or doing anything.

One of the witnesses said that the crowd was so closely packed that it would not have been possible for Coney to push his way out where he saw him hemmed in.

One witness spoke to merely seeing Gilliam in the crowd.

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7. It was contended for the prisoners that it was not proved that this was a prize fight, and that there was no evidence of assaults committed by them or either of them upon Burke and Mitchell, or that they countenanced, aided or abetted the men who were fighting, and that the seventh and eighth counts were not supported.

8. I directed the jury that they were to determine whether or not this was a prize fight, and I added, "There is no doubt that prize fights are illegal—indeed, just as much so as that persons should go out to fight with deadly weapons, and it is not at all material which party strikes the first blow; and all persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are in point of law guilty of an assault." I also added, in the words of Littledale, J., in *The King v. Murphy* (1), which I read to the jury from *Russell on Crimes* (5th ed. vol. i. p. 818), "If they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything."

9. The jury found that Burke and Mitchell were guilty of an assault upon each other, and that Parker and Symonds were guilty of an assault.

They also found that Coney, Gilliam and Tully were guilty; but they added that it was in consequence of my direction of law, as they found that Coney, Gilliam and Tully were not aiding or abetting.

10. I thereupon directed a verdict of guilty to be entered against Coney, Gilliam and Tully, upon the seventh and eighth counts.

The question for the opinion of the Court is, whether my direction to the jury was correct.

The case was argued twice, the first time before five Judges, and the second time before the following eleven Judges—namely, Lord Coleridge, C.J., Denman, J., Pollock, B., Huddleston, B., Hawkins, J., Manisty, J., Lopes, J., Stephen, J., Mathew, J., Cave, J., and North, J.

H. D. Greene (*Hammond-Chambers* with him), appeared for the prisoner Coney.

(1) 6 Car. & P. 108.

Poland (*J. R. W. Bros.*, and *R. G. C. Mowbray*, with him), for the prosecution.

The arguments and the cases cited fully appear in the judgments.

Cur. adv. vult.

CAVE, J.—In this case I am of opinion that the direction to the jury was wrong, and consequently that the conviction ought not to stand. No direction to a jury can, in my opinion, be regarded as right or wrong without reference to the evidence before the jury; for a direction which is sufficient under a certain state of facts may be misleading and wrong under another state of facts. It is important, therefore, first to see what the offence was with which the prisoners were charged, and what was the evidence against them. The prisoners were charged in one count with a common assault on one Burke, and in another count with a like assault on one Mitchell. The evidence was that on the 16th of June last, at the close of Ascot races, Burke and Mitchell had engaged in a fight near the road from Ascot to Maidenhead; that a ring was formed with posts and ropes; that a large number of persons were present looking on, some of whom were undoubtedly encouraging the fight; that the men fought for some time, and that the three prisoners in question were seen in the crowd, but were not seen to do anything, and there was no evidence how they got there or how long they stayed there. The chairman of quarter sessions directed the jury in the words of 1 *Russell on Crimes*, p. 818: "There is no doubt that prize fights are illegal—indeed just as much so as that persons should go out to fight with deadly weapons, and it is not at all material which party strikes the first blow; and all persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are, in point of law, guilty of an assault." And the chairman added, in the words of Mr. Justice Littledale, in *The King v. Murphy* (1): "If they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything." By this direction I gather that the chairman laid down as matter of law—first, that the actual fighters

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in a prize fight are guilty of an assault; secondly, that if any person is shewn to have been present in the crowd looking on at the fight, that is not merely evidence, but, if unexplained, conclusive proof, that he was aiding and abetting the assault. That seems to be the natural meaning of the language used, and that, from the finding of the jury, appears to me to be the sense in which they understood it. They found a verdict of guilty against five of the prisoners, who, I presume, were proved to have taken some active part, or to have been there for the purpose of encouraging the fight; and as to the three prisoners in question they found that they were guilty of an assault, and yet they were not aiding and abetting, which is to my mind an inconsistent finding. Indeed, on no other supposition can I understand the verdict, for the evidence against the three prisoners, and especially against Gilliam, is quite consistent with their being labourers working near, or persons going quietly home from the races, who, observing a crowd, went up to see what the matter was, and, finding it was a fight, stayed some short time looking on. For the defence it was first contended that, inasmuch as Burke and Mitchell had agreed to fight, there was no assault. I am, however, of opinion that this is not so. With regard to an action for an assault, in the case of *Boulter v. Clarke* (2) it was held by Chief Baron Parker, that it was no defence to allege that the plaintiff and defendant fought together by consent, the fighting itself being unlawful; and in *Matthew v. Ollerton* (3) it was held, that if one license another to beat him, such licence is no defence, because it is against the peace. So with regard to an indictment for an assault, Mr. Justice Patteson, in *The King v. Perkins* (4), speaking of a prize fight, says: "If all these persons went out to see these men strike each other, and were present when they did so, they are all, in point of law, guilty of an assault. There is also the authority of Mr. Justice Coleridge in *The King v. Lewis* (5), who says that whenever two persons go out to strike each other,

and do so, each is guilty of an assault. *The Queen v. Orton* (6) proves nothing against this view, for the most that can be said of that case is, that this point did not arise there. *Christopherson v. Bare* (7) has also nothing to do with this point; all that was there decided being that a plea of leave and licence was not a good defence to an action for an assault, on the ground that, if that is a defence, it arises under the general issue, an assault by leave and licence being a contradiction in terms. The true view is, I think, that a blow struck in anger, or which is likely or is intended to do corporal hurt, is an assault, but that a blow struck in sport, and not likely nor intended to cause bodily harm, is not an assault; and that, an assault being a breach of the peace and unlawful, the consent of the person struck is immaterial. If this view is correct, a blow struck in a prize fight is clearly an assault; but playing at single-sticks or wrestling do not involve an assault, nor does boxing with gloves in the ordinary way, and not with the ferocity and severe punishment to the boxers deposed to in *The Queen v. Orton* (6). It was next contended that the chairman was wrong in directing the jury in the words of Mr. Justice Littledale in *The King v. Murphy* (1), that if the prisoners were not merely casually passing by, but stayed at the place, they encouraged it by their presence, although they did not say or do anything. Now it is a general rule in the case of principals in the second degree that there must be participation in the act, and that, although a man is present whilst a felony is being committed, if he takes no part in it, and does not act in concert with those who commit it, he will not be a principal in the second degree merely because he does not endeavour to prevent the felony, or apprehend the felon. In 1 *Hale P. C.* 439 it is said that to make an abettor to a murder or homicide principal to the felony there are two things requisite: First, he must be present; second, he must be aiding and abetting. "If," says Hale, "A and B be fighting, and C, a man of full age, comes by chance, and is a looker-on only, and assists neither, he is not guilty of murder

(2) Bull. N.P. 16.

(3) Comb. 218.

(4) 4 Car. & P. 537.

(5) 1 Car. & K. 419.

(6) 39 L. T. 294.

(7) 11 Q.B. Rep. 473; 17 Law J. Rep. Q.B. 109.

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or homicide as principal in the second degree." So again in *Foster's Crown Law*, p. 350, it is said that "in order to render a person an accomplice and a principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance if necessary; and therefore if A happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoureth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behaviour of his, though highly criminal, will not of itself render him either principal or accessory." "I would be here," he continues, "understood to speak of that kind of homicide, amounting in construction of law to murder, which is usually committed openly and before witnesses, for in the case of assassinations done in private, to which witnesses who are not partakers in the guilt are very rarely admitted, the circumstances I have mentioned may be made use of against A, as evidence of consent and concurrence on his part; and in that light should be left to the jury, if he be put upon his trial." This seems to hit the point. Where presence may be entirely accidental, it is not even evidence of aiding and abetting. Where presence is *prima facie* not accidental it is evidence, but no more than evidence, for the jury. In accordance with the principle here laid down Chief Baron Kelly, in *The Queen v. Atkinson* (8), a case of persons who were indicted for a serious riot, held that the mere presence of a person among the rioters, even though he possessed the power, and failed to exercise it, of stopping the riot, did not render him liable on such a charge, and that in order to find any of the defendants guilty the jury must be satisfied that they had taken part in an assembly for an unlawful purpose, and had helped, or encouraged, or incited the others in the prosecution of that purpose. In *The King v. Borthwick* (9) Mr. Justice Willes laid it down that from mere presence the Court cannot intend that the prisoner was aiding and abetting. In *The King v. Perkins* (4) Perkins and three others were indicted for a riot and an assault on Coates. It appeared that a

prize fight was fought between Perkins and Coates, and that of the other three defendants one acted as Perkins' second, another collected money for the combatants, while the third walked round the ring and kept the people back. Mr. Justice Patteson said, "It is proved that all the defendants were assisting in this breach of the peace, and there is no doubt that persons who are present on such an occasion, and taking any part in the matter, are equally guilty as principals." The foreman of the jury said that they doubted whether they could find all the defendants guilty of an assault; whereupon Mr. Justice Patteson said: "If all these persons went out to see these men strike each other, and were present when they did, they are all, in point of law, guilty of an assault. There is no distinction between those who concur in the act, and those who fight." Whereupon the jury convicted the men of the riot, but acquitted them of the assault. In that case there was ample evidence that the accused were guilty of the assault, and the case did not require Mr. Justice Patteson to lay down, nor do I understand him as having laid down, that a mere on-looker is *ipso facto* guilty of an assault. On the contrary, I understand him to say, that to be guilty, they must not only be present, but must be "taking part in the matter," as he expresses it in the one passage, or "concurring in the act," as he expresses it in the other. In *The Queen v. Young* (10) the prisoners were indicted for the murder of Mirfin, who was killed in a duel by one Eliot. In summing up, Mr. Justice Vaughan said: "There is no difficulty as to the law upon this subject. Principals in the first degree are those by whom the death wound is inflicted. Principals in the second degree are those who are present at the time it is given aiding and abetting, comforting and assisting the persons actually engaged in the contest. Mere presence alone will not be sufficient to make a party an aider and abettor, but it is essential that he should by his countenance and conduct in the proceeding, being present, aid and assist the principals. If either of the prisoners sustained the principal by his advice or presence, or if you think he went down for

(8) 11 Cox, 330.

(9) 1 Dougl. 207.

(10) 8 Car. & P. 644.

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the purpose of encouraging and forwarding the unlawful conflict, although he did not do or say anything; yet, if he was present and was assisting and encouraging when the pistol was fired, he will be guilty of the offence imputed by the indictment." In that direction I entirely concur, but I believe, if a similar direction had been given in the present case, the prisoners would have been acquitted. In *The Queen v. Cuddy* (11), the prisoner was charged with aiding and abetting Munro in the murder of Colonel Fawcett, whom Munro had shot in a duel. Mr. Justice Williams, in directing the jury in the presence of Baron Rolfe, said, "When two persons go out to fight a deliberate duel, and death ensues, all persons who are present on that occasion encouraging or promoting that duel, will be guilty of abetting the principal offender." So far the decisions are uniform. There are, however, two which may seem to favour a different view of the law. In *The King v. Bellingham* (12) Bellingham and Savage had agreed to fight, and about 1,000 persons were assembled to witness the fight. Mr. Rogers, a police magistrate, being applied to to prevent it, went to the place, and told them they should not fight. Skinner said they should, and a scuffle ensued between him and Mr. Rogers, which ended in a general tumult on the part of the mob, and the rescue of Skinner. Bellingham, Savage and Skinner were indicted for a riot and for assaulting Mr. Rogers, and were convicted. In the course of his summing up Mr. Justice Burrough said: "By law whatever is done in such an assembly by one, all present are equally liable. These fights are unlawful assemblies, and every one going to them is guilty of an offence." These *obiter dicta* appear to me to be no justification for the ruling of the chairman in the present case. Mr. Justice Burrough could not have intended to say that all who were present for the purpose of seeing the fight were *ipso facto* liable for the riot and assault upon the magistrate, which arose incidentally out of his trying to prevent the fight, and, if he did not mean that, his remarks had no relation to the offence then being

tried, and were merely in the nature of a caution. Moreover, taking the whole together, Mr. Justice Burrough seems to have referred to people going to prize fights for the purpose of encouraging them, and not to mere on-lookers. In *The King v. Murphy* (1) the prisoner was indicted for the murder of one Thompson. It was proved for the prosecution that there was a fight between Michael Murphy and the deceased, who died in consequence of the blows he received, and that the prisoner acted as one of the seconds. For the defence witnesses were called to shew that, though the prisoner was present, he did not act as second, and that he did nothing, and did not even say anything. Mr. Justice Little-dale told the jury that if the prisoner was at the fight encouraging it by his presence he was guilty of manslaughter, although he took no active part in it, and, on his attention being drawn to the evidence for the defence, his Lordship said: "I am of opinion that persons who are at a fight, in consequence of which death ensues, are all guilty of manslaughter if they encouraged it by their presence, I mean if they remained present during the fight. I say that if they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not say or do anything. If the death occurred from the fight all persons encouraging it by their presence are guilty of manslaughter." This summing up unfortunately appears to me capable of being understood in two different ways. It may mean either that mere presence unexplained is evidence of encouragement, and so of guilt, or that mere presence unexplained is conclusive proof of encouragement, and so of guilt. If the former is the correct meaning I concur in the law so laid down; if the latter, I am unable to do so. It appears to me that the passage tending to convey the latter view is that which was read by the chairman in this case to the jury, and I cannot help thinking that the chairman believed himself, and meant to direct the jury, and at any rate I feel satisfied that the jury understood him to mean, that mere presence unexplained was conclusive proof of encouragement, and so of guilt, and it is on this ground I hold that this conviction ought not to stand.

(11) 1 Car. & K. 210.

(12) 2 Car. & P. 234.

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MATHEW, J.—The arguments of counsel made it apparent that a difference of opinion upon the meaning of the statements in this case is possible. But it seems to me that those statements are sufficiently clear; and I proceed to say what I understand to have been proved or admitted at the trial. The fight in which the defendants Coney, Gilliam and Tully were charged with aiding and abetting, took place in public, between two men named Burke and Mitchell. The arrangements were those usually adopted at prize fights. Measures were taken, which could only have been effective with the consent of those present, to secure sufficient space for the men to fight in. Spectators, in number from 100 to 150, grouped themselves round the ring. Some persons in the crowd offered bets upon the result; but others, among whom were the three defendants, appeared to have been content to watch the fighting, without interfering with each other, or with the combatants, and without saying or doing anything. The fight lasted from three-quarters of an hour to an hour. These facts were given in evidence, but there were other matters not made the subject of proof which it would seem reasonable to suppose that the jurors would know, assuming them to have been possessed of neither less intelligence, nor greater, than is common among jurymen. They would be aware, it seems to me, that there is a class of persons to whom prize fights are attractive; and that pugilists fight in public for the gratification of those persons; and that the chief incentive to the wretched combatants to fight on until (as happens too often) dreadful injuries have been inflicted, and life endangered or sacrificed, is the presence of spectators, watching with keen interest every incident of the fight. The jurors would also know that money is usually staked upon the result by the combatants, and by the spectators. The three defendants were put upon their trial with the men who fought. All were charged with a common assault. The combatants were found guilty, and no question was raised as to the propriety of their conviction. The case made on behalf of the prosecution against the other defendants appears to have been

this, that there was evidence that they were present as spectators, and for the purpose of seeing the fight, and for no other purpose, and that those who fought and those who watched the fighting were assembled in furtherance of a common object of a criminal character, and that it was not necessary to prove that the defendants did, or said, anything in order to prove that they were aiding and abetting. In this state of things it becomes very important to see how the case for the prosecution was met, and upon what grounds the jury were invited to acquit the prisoners. Two points only appear to have been raised on the evidence. First, that the defendants might have been present accidentally; and secondly, that they might have witnessed the fighting reluctantly. Various other suggestions, which were made in the course of the argument to account for the presence of the defendants for some innocent or praiseworthy purpose, would seem not to have been considered worthy of the consideration of the jury. In support of the first of these points made for the defendants, evidence was obtained upon cross-examination that there had been a rumour that two naked men were about to run a race. The object of this was to suggest that the defendants had come to see the race. The jury seem to have thought that what they came to see was not a race, but the fight. If the question were for me, I should have been of this opinion. In support of the second point, it was shewn that the crowd of spectators was so closely packed that the defendant Coney (in the opinion of one witness) could not have pushed his way out of the crowd had he wished it. The jury would seem to have considered that this did not prove Coney to be a reluctant witness of what was going on. No evidence was offered for the defence, and no further attempt was made to explain how the defendants came to be among those who were looking on, but it was argued that it was not proved that there was a prize fight, and that there was no evidence of assaults committed by the defendants on either combatant; or that they countenanced, aided or abetted the men who were fighting. In these circumstances the jury were told by the chairman, "that persons

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who go to a prize fight to see the combatants strike each other, and are present when they do so, are in law guilty of an assault," and he added, in the words of Mr. Justice Littledale, in *The King v. Murphy* (1), "that if they" (meaning the persons who were present) "were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not do or say anything." The question then which the jury must, in my opinion, have understood the chairman to ask, was this, namely, whether, when the fight took place, the defendants were there for the purpose of seeing the combatants strike each other. If so, the direction was, that they ought to find the defendants guilty, although they were not shewn to have done or said anything to assist either combatant. The finding of the jury, as I understand it, was that the defendants were present at the fight for the purpose of seeing the combatants strike each other, and that the defendants were guilty, but they added that the defendants did not otherwise, by act or word, aid or abet either combatant. The chairman directed a verdict of guilty to be entered upon the counts for assault, but upon the application of counsel for the defendants he reserved for this Court the question whether his direction was right in point of law. He was not asked to reserve the question whether or not there was evidence that the defendants were present as spectators, but, as I understand, whether, assuming them to be shewn to have been present as spectators, they were criminally responsible. It was urged in the course of the argument before us, that the chairman of quarter sessions must have been understood by the jury to say, that the mere presence of the defendants was of itself conclusive proof that they were aiding and abetting. But I cannot adopt this view of his direction. The chairman called the attention of the jury pointedly to the distinction between the casual presence of a passer by, and the deliberate presence of a spectator. Further, the points made before the jury on behalf of the defendants seem to me to assume that there was evidence, not merely that the defendants were present, but that they were there for the purpose of looking on.

There was another point made by the defendants' counsel, among several which had not been raised at the trial, and which seems deserving of notice. It was said that, because of the consent of the combatants to fight, there could not be an assault, and that the combatants and the defendants were therefore entitled to be acquitted. It would, perhaps, be a sufficient answer to say that this was not the point reserved; but, as the matter was argued at some length, I think it right to state my opinion upon it. The contention really meant that the agreement of the men to fight rendered the contest lawful and innocent. There is, however, abundant authority for saying that no consent can render that innocent which is in fact dangerous. This is as true of a prize fight as it is of a duel. The fists of trained pugilists are dangerous weapons, which they are not at liberty to use against each other. No reason was given why the decisions to this effect which have been referred to by my brother Mr. Justice Cave should be overruled. The next point made in the argument for the defendants was that upon which counsel seemed most to rely. It was contended that the presence of persons shewn to have assembled for the purpose of witnessing prize fights did not prove that they were aiding and abetting, and afforded no evidence from which a jury might draw that they were; and it was urged that the decisions upon which the chairman of quarter sessions had acted were wrong, and ought to be overruled. It was argued that, even though the combatants might be criminally responsible, it did not follow that spectators were chargeable with any offence. As to the latter class, it was contended that the direction to the jury should have been, that it was for them to say whether the defendants were encouraging or assisting the combatants, and that, if it were not shewn that anything had been said or done by a particular spectator, the jury would be justified in acquitting him. If this contention were correct, some subtle distinctions would have to be made in dealing with the question of the criminality of persons present at prize fights. For instance, it would be clear that those persons who helped to keep the ring, and so to

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provide sufficient space for the combatants, were aiding and abetting; but those who, in conformity with the arrangements made by the ring-keepers, remained outside the ring with the same object, would not be aiding and abetting, unless the jury thought fit to say so. I cannot see the grounds for this distinction. Many illustrations given to us of the mistake into which it was suggested that Mr. Justice Littledale and Mr. Justice Patteson had fallen were due, as it seems to me, to a misapprehension of the meaning of their decisions. Those judges never intended to say that the mere fact of presence at the place where a prize fight was going on was proof of an intention to aid and abet. What I understand their Lordships to have laid down is, that where a person was shewn to have been present as a spectator for the purpose of watching the fight, and with no other object, he was encouraging the combatants in their criminal purpose, and was therefore aiding and abetting. To submit to a jury in such a case the question of guilt of spectators is to treat what seems to me a clear matter of law as a doubtful question of fact. It is to intimate to the jury that they will not be wrong in determining that question in favour of the accused; and the practical result would be that spectators would, as a general rule, escape conviction and punishment; as, without spectators, I believe there would be no prize fights. The Courts would thus have surrendered the principal means of discouraging the disgraceful exhibitions in question, which there was some reason to hope, under the pressure of the law, were gradually being discontinued. It was said by counsel for the defendants that the Legislature had not declared that it was criminal to go and see a prize fight, and that it was not for Judges to create a new offence, but the decisions upon which the chairman's direction proceeded do not appear to me to be open to this attack. The learned Judges referred to have not sought to create a new offence, but have determined, as it seems to me, in accordance with reason and principle, what is sufficient in law to establish a charge of countenancing and encouraging a prize fight. Their reasoning may be stated thus: A prize fight, which is an assault and therefore contrary to the

law, takes place in public, in order that it may be witnessed by spectators. The spectators by their presence lend themselves to the purpose of the combatants, and countenance and encourage them in a violation of the law. They therefore aid and abet. I have no doubt in this case that the defendants were spectators, and that the jury meant to find, and properly found, that they were so; and I am of opinion that they are rightly convicted.

STEPHEN, J.—I entirely agree with the judgment delivered by my brother Cave. His statement of the facts of the case, and his view of the chairman's direction to the jury relieve me from the necessity of referring to them in detail. I wish, however, to state in a few words the principle as to the effect of consent in charges of bodily violence, which I deduce from the numerous authorities referred to by him, and to add one or two observations of my own on that branch of the case relating to aiding and abetting. The principle as to consent seems to me to be this. When one person is indicted for inflicting personal injury upon another, the consent of the person who sustains the injury is no defence to the person who inflicts the injury, if the injury is of such a nature, or if it is inflicted under such circumstances, that its infliction is injurious to the public as well as to the person injured. But the injuries given and received in prize fights are injurious to the public, both because it is against the public interest that the lives and the health of the combatants should be endangered by blows, and because prize fights are disorderly exhibitions, and mischievous on many obvious grounds. Therefore the consent of the parties to the blows which they mutually receive does not prevent these blows from being assaults. I may add one authority to those which my brother Mr. Justice Cave has quoted on this subject. In *Brooke's Abridgment* (13) it is said that in the 11 Hen. 7 it was held that tournaments were illegal, unless by the commandment of the king, and it is added that in the time of Henry 8 the Judges held that even the king's commandment would

(13) Corone, 228.

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not justify or excuse a person who killed another in a tournament, because the commandment itself was illegal. This view is adopted by Lambard (14), Hale (15), Foster (16) and East (17). In cases where life and limb are exposed to no serious danger in the common course of things, I think that consent is a defence to a charge of assault, even when considerable force is used, as, for instance, in cases of wrestling, single-stick, sparring with gloves, football, and the like; but in all cases the question whether consent does or does not take from the application of force to another its illegal character is a question of degree depending upon circumstances. Upon the question whether bare voluntary presence at a prize fight is, in itself, either an aiding or abetting of the combatants, or conclusive evidence of it, I have only one remark to add to my brother Cave's judgment. I think that the chairman rightly apprehended the ruling of Mr. Justice Littledale in *The King v. Murphy* (1), and that that ruling was wrong. In that case it was alleged by the prosecution that Murphy acted as second in the fight. The witnesses for the defence denied this, and said that Murphy neither did nor said anything. Mr. Justice Littledale told the jury upon this, that persons who are at a fight in consequence of which death ensues "are all guilty of manslaughter if they encourage it by their presence—I mean if they remained present during the fight. I say that if they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything." I do not think that such cases as were suggested during the argument, cases of persons voluntarily witnessing a prize fight for some innocent, or even laudable purpose, were present to the mind of Mr. Justice Littledale when he said this. It would be unfair to construe language, chosen on the spur of the moment, and in reference to the facts of a particular case, as it is necessary to construe an Act of Parliament; but I think the learned Judge cannot have meant to say

less than that a person who looks on at a prize fight out of mere curiosity does thereby aid and abet the fight. It would have served no purpose to say anything short of this. No one could doubt Murphy's guilt if he acted as second, or did any other positive act to encourage the fight. He was either in that position, or he was a mere spectator, and the whole point of the Judge's charge is, that in either case he was guilty. In this, I think that Mr. Justice Littledale went too far, being no doubt desirous of providing an easy and summary mode of suppressing prize fights. It may, or may not, be desirable to make it a criminal offence to look on at a prize fight in the absence of a lawful excuse to be proved by the spectator, but I think we should be making instead of interpreting the law, if we were to say that such conduct is now a crime. I am very far from thinking that this is in itself a conclusive objection to this conviction. A considerable part of the law of England consists of judicial decisions, and in the very nature of things this must be so. Every decision upon a debated point adds a little to the law by making that point certain for the future. Indeed, whichever way this case may be decided, it will settle the law upon the precise point involved, and it is this which gives to judicial decisions their great importance. It seems to me, however, that in exercising the narrowly qualified power of *quasi* legislation which the very nature of our position confers upon us, we ought to confine ourselves as far as possible (there may be cases where such a course is not possible) to applying well-known principles and analogies to new combinations of facts, and to supplying to general definitions and maxims, or to general statutory expressions, qualifications which, though not expressed, are, in our opinion, implied. I will illustrate my meaning as to what, in my opinion, the Court ought or ought not to do. I think that the Judges were acting within their powers when they decided that the offence of obtaining money by false pretences could be committed only by making a false pretence as to an existing fact, though this is not expressed by the statute which creates the offence. I think, on the other hand, that

(14) P. 129.

(15) 1 P.C. 472.

(16) *Ibid.* 259.(17) *Ibid.* 270.

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the Court would exceed its powers if it were to remove by judicial decisions the defects in the common law definition of theft, which have caused so many failures of justice. To abolish a well-established rule of law, because it is a bad rule, is the business of the Legislature. Applying this principle to the present case, if we go further and extend the law upon considerations of general expediency, we are, I think, invading the province of the Legislature. I feel fully justified in saying that the doctrine that the absence of consent is necessary to an assault requires the qualification which I have already stated, but I do not see my way to saying that the particular misdemeanour of assault differs from all others in the circumstance that a mere looker on is to be considered as a principal unless he is able to prove some reasonable excuse for his presence. Such a rule would, in my judgment, be opposed to all legal analogies, and constitute an exception to all rules. The Legislature can create such an exception if it pleases, but I think that the Judges ought not to introduce it, even if they think it expedient that it should be introduced, as to which I express no opinion. On these grounds I think that the direction to the jury was wrong; I also think that their verdict was equivalent to an acquittal; and on both grounds I think that the conviction should be set aside.

LOPES, J.—I have not thought it necessary to prepare a lengthened judgment reviewing the authorities, as the cases have been fully reviewed in the judgment of my brother Cave. I understand the ruling of the chairman of the quarter sessions to amount to this, that mere presence at a prize fight, unexplained, is conclusive proof of aiding and abetting, even if there be no evidence that the person or persons so present encouraged, or intended to encourage, the prize fight by his or their presence. I cannot hold, as a proposition of law, that the mere looking on is *ipso facto* a participation in or encouragement of a prize fight. I think there must be more than that to justify a conviction for an assault. If, for instance, it was proved that a person went to a prize fight knowing it was to take place, and re-

mained there for some time looking on, I think that would be evidence from which a jury might infer that such person encouraged, and intended to encourage, the fight by his presence. In the present case, the three prisoners were merely seen in the crowd, were not seen to do anything, and there was no evidence why or how they came there, or how long they stayed. Applying the direction of the chairman to this state of facts, I think it was wrong.

NORTH, J., concurred in the judgment of Lopes, J.

HAWKINS, J.—At the Berkshire October Quarter Sessions, 1881, the defendants were convicted under the direction of Mr. Benyon, the chairman, upon two counts of an indictment. One charged them with an assault upon Charles Mitchell, the other with an assault upon John Burke—Mitchell and Burke being the combatants in a fight which took place at Ascot on the 16th of June, 1881. The facts are fully set forth in the case reserved for the opinion of the Court of Criminal Appeal. Two questions were argued before us: First, whether the combatants themselves were guilty of assaults upon each other; and, secondly, whether the defendants were aiders and abettors in the fight, and therefore also rightly convicted. Upon the first question, the defendants' counsel contended that, each of the combatants having assented to the fight, neither could be convicted of an assault upon the other. To this contention I cannot give my sanction. As a general proposition, it is undoubtedly true that there can be no assault unless the act charged as such be done without the consent of the person alleged to be assaulted, for want of consent is an essential element in every assault, and that which is done by consent is no assault at all—*Christopherson v. Bare* (7), *The Queen v. Guthrie* (18) and numerous other cases. It may be that consent can in all cases be given so as to operate as a bar to a civil action, upon the ground that no man can claim damages for an act to which he

(18) 39 Law J. Rep. M.C. 95; Law Rep. 1 C.C.R. 241.

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himself was an assenting party—*Christopherson v. Bare* (7). That case, however, was decided upon a point of pleading, and must not be considered as a direct authority on this subject. It is not necessary, however, upon the present occasion to express any decided opinion upon the point, for, whatever may be the effect of a consent in a suit between party and party, it is not in the power of any man to give any effectual consent to that which amounts to, or has a direct tendency to create a breach of the peace, so as to bar a criminal prosecution. In other words, though a man may by his consent debar himself from his right to maintain a civil action, he cannot thereby defeat proceedings instituted by the Crown in the interests of the public for the maintenance of good order—per Mr. Justice Burrough in *The King v. Bellingham* (12). He may compromise his own civil rights, but he cannot compromise the public interests. Nothing can be clearer to my mind than that every fight in which the object and intent of each of the combatants is to subdue the other by violent blows, is, or has a direct tendency to, a breach of the peace, and it matters not, in my opinion, whether such fight be a hostile fight begun and continued in anger, or a prize fight for money or other advantage. In each case the object is the same, and in each case some amount of personal injury to one or both of the combatants is a probable consequence, and, although a prize fight may not commence in anger, it is unquestionably calculated to rouse the angry feelings of both before its conclusion. I have no doubt then, that every such fight is illegal, and that the parties to it may be prosecuted for assaults upon each other. Many authorities support this view. In *The King v. Ward* (19) the prisoner was tried for the slaughter of a man whom he had killed in a fight to which he had been challenged by the deceased for a public trial of skill in boxing. No unfairness was suggested, and yet it was held that the prisoner was properly convicted. To the same effect is the case of *The Queen v. Lewis* (5), in which Mr. Justice Coleridge said: "When two persons go out to strike

each other, each is guilty of an assault." See also *The Queen v. Hunt* (20), per Baron Alderson; *The Queen v. Brown* (21), per the same learned Baron; and *The Queen v. Young* (10), per Baron Bramwell. The cases in which it has been held that persons may lawfully engage in friendly encounters not calculated to produce real injury to or to rouse angry passions in either, do not in the least militate against the view I have expressed, for such encounters are neither breaches of the peace, nor are they calculated to be productive thereof; but if, under colour of a friendly encounter, the parties enter upon it with, or in the course of it, form the intention to conquer each other by violence calculated to produce mischief, regardless whether hurt may be occasioned or not—as, for instance, if two men, pretending to engage in an amicable spar with gloves, really have for their object the intention to beat each other until one of them be exhausted and subdued by force, and so engage in a conflict likely to end in a breach of the peace, each is liable to be prosecuted for an assault—*The Queen v. Orton* (6). Whether an encounter be of the character I have just referred to, or a mere friendly game, having no tendency, if fairly played, to produce any breach of the peace, is always a question for the jury in case of an indictment, or the magistrates in case of summary proceedings. The cases cited of alleged indecent assaults on young children by their consent are no authorities to the contrary, and may all be disposed of in this one observation, namely, that the indecent imposition of hands charged in those cases as assaults neither involved, nor were calculated to involve, breaches of the peace, and therefore, being by consent, were not punishable as assaults, any more than they would have been had the objects of them been for the most innocent purposes. I think it wholly immaterial, in considering cases of this description, to inquire by whom the first blow was struck, for, as was said by Mr. Justice Lindley, in *The Queen v. Knock* (22), the right of self-defence does not justify counter blows

(20) 1 Cox C.C. 177.

(21) 1 Car. & M. 314.

(22) 14 Cox. C.C. 1.

(19) 1 East. P.C. 270.

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struck with a desire to fight. Upon the ruling of the chairman as to the illegality of the fight, I entertain therefore no manner of doubt, and I am clearly of opinion that the combatants themselves were each guilty of an assault upon the other. Nor do I entertain any doubt that all who were present aiding or abetting the fight were liable to be indicted as principals to it; for by 24 & 25 Vict. c. 94. s. 8, "Whoever shall aid, abet, counsel or procure the commission of a misdemeanour shall be tried, &c., as a principal." Whether the defendants were rightly convicted as aiders and abettors is a different matter. I am of opinion they were not. In summing up the case, the chairman directed the jury that all persons who went to a prize fight to see the combatants strike each other, and who were present when they did so, were in point of law guilty of an assault, for, "if they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything." The jury on that direction, found the defendants guilty, but they also found expressly that they were not aiding or abetting. The whole question therefore for us to determine as a matter of law is, not whether voluntary presence at a prize fight is evidence of an aiding and abetting, but whether inactive presence at a prize fight as a voluntary spectator thereof amounts of itself to such encouragement of it as to render a man amenable to the criminal law as an aider and abettor in that breach of the peace. In support of the conviction Mr. Poland mainly relied upon a series of authorities in which *dicta* of most eminent Judges are no doubt to be found which apparently support the ruling of the chairman. In *The King v. Bellingham* (12), which was an indictment for riot and assaulting a magistrate who was endeavouring to stop a prize fight, Mr. Justice Burrough, before whom it was tried, is reported to have said: "By law whatever is done in such an assembly by one, all present are equally liable for. These fights are illegal. No consent can make them legal, they are unlawful assemblies. Every one going to them is guilty of an offence." In *The King v. Perkins* (4), which was an indictment for a riot and assault on one Coates,

one of the combatants in a prize fight, Mr. Justice Patteson, after stating that prize fights were altogether illegal, said, "If all these persons went out to see these men strike each other, and were present when they did so, they are all in point of law guilty of an assault; there is no distinction between those who concur in the act and those who fight." In *The King v. Hargrave* (23), a very imperfectly reported case upon the trial of an indictment for manslaughter, the result of a fight in which one of the combatants was killed, the prisoner was charged with aiding and abetting, and in that case Mr. Justice Patteson seems to have adhered to his former opinion. In *The King v. Murphy* (1), upon the trial of an indictment for manslaughter (deceased having been killed in a fight in which it was alleged the prisoner acted as a second), Mr. Justice Littledale said: "If the prisoner was present at this fight, encouraging it by his presence, he is guilty, though he took no active part in it. I am of opinion that persons who are at a fight in consequence of which death ensues are all guilty of manslaughter, if they encouraged it by their presence. I mean, if they remained present during the fight. I say that if they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not say or do anything." This last is the strongest authority in support of the proposition contended for by Mr. Poland, that mere voluntary presence as a spectator at a fight *per se* constitutes an aiding and abetting. In considering the weight which ought to be attached to these *dicta* upon the present occasion, it should be remembered that they were apparently uttered without argument; moreover, they should be read in connection with the facts of the particular cases to which they were applied, and, as I think, rather as strong indications of the opinions of the learned Judges who gave utterance to them as to the inferences which ought to be drawn by the jury from the evidence in those cases, than as carefully considered declarations of the law as applicable to every case of this description. In each of the cases above

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referred to much more was alleged against the accused than that they were mere spectators. Thus in *The King v. Bellingham* (12) two of the defendants were actually fighting, whilst the third was actively endeavouring to prevent interference. In *The King v. Perkins* (4) one of the defendants was a combatant, another was a second, a third kept the ring and the fourth collected entrance money. In *The King v. Hargrave* (23) the facts are very imperfectly stated, but, coupling the text with the marginal note, it would seem that the prisoner was present, and sanctioned the fight. In *The King v. Murphy* (1) no doubt the language of Mr. Justice Littledale was used with reference to a state of facts not unlike the present. I am, however, strongly inclined to think that in using it he was expressing rather his own opinion, as a matter of fact, that a man who was voluntarily present at a fight encouraged it, than a proposition of law, that a mere spectator at a fight was *ipso facto* an abettor of it. If, however, he intended so to rule, with all respect to that learned Judge, I cannot look upon that ruling as satisfactory. In my opinion, to constitute an aider and abettor, some active steps must be taken by word or action, with the intent to instigate the principal or principals. Encouragement does not of necessity amount to aiding and abetting; it may be intentional or unintentional, a man may unwittingly encourage another in fact by his presence, by mis-interpreted words or gestures, or by his silence or non-interference, or he may encourage intentionally by expressions, gestures or actions intended to signify approval. In the latter case he aids and abets; in the former he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime, and offered no opposition to it, though he might reasonably be expected to prevent, and had the power so to do, or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in finding that he wilfully encouraged, and so aided and abetted.

But it would be purely a question for the jury whether he did so or not. So, if any number of persons arrange that a criminal offence shall take place, and it takes place accordingly, the mere presence of any of those who so arranged it would afford abundant evidence for the consideration of a jury of an aiding and abetting. A very strong authority upon this point is to be found in the case of *The King v. Borthwick* (9). That was an indictment for murder, charging the prisoners as principals in the second degree. Mr. Justice Willes, citing *Messenger's Case* from *Kelynges' Reports*, said: "Where several acts of force are found to have been actually committed in pursuance of the design" (that is, a common illegal design), "there is no need to find the prisoners to have been aiding and assisting, for that is only necessary to be found where the jury find a person was there amongst them, and find no particular act of force done by him, but only in his presence. In the present case it is not found that the prisoners did any act during the affray, or that they were present aiding and assisting, and the Court cannot intend that they were." In *The Queen v. Young* (10), which was an indictment for murder (in a duel between Eliot and Mirfin) against the prisoners as principals in the second degree, Mr. Justice Vaughan in addressing the jury said: "Mere presence alone will not be sufficient to make a party an aider and abettor; but it is essential that he should, by his countenance and conduct in the proceeding, being present, aid and assist the principals." "Did the prisoners give their aid and assistance by their countenance and encouragement of the principals in this contest? It is said one of the prisoners went for the purpose of bringing about a reconciliation, not to give countenance to the continuance of the contest; that is for you." In *The Queen v. Cuddy* (11), the prisoner was indicted as principal in the second degree to murder (in a duel between Munro and Fawcett); Mr. Justice Williams said: "The question is whether the prisoner was at the spot at the time, and whether he took such a part as amounts in the language of this indictment to an aiding and abetting of the principal offender. All persons who were present

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encouraging or promoting will be guilty of abetting the principal offender;" and with this direction the question was left to the jury. In *The Queen v. Atkinson* (8), Chief Baron Kelly, on the trial of the defendants for a riot, expressly ruled "that the mere presence of a person among the rioters, even though he possessed the power, and failed to exercise it, of stopping the riot, did not render him liable on such a charge." And he left the case to the jury with this direction, "that, in order to find any of the defendants guilty, the jury must be satisfied that they had taken part in an assembly for an unlawful purpose, and had helped or encouraged or incited the others in the prosecution of that purpose." In *The Queen v. Taylor* (24), Chief Justice Cockburn said: "To support an indictment against a man as an accessory by abetting an offence, there must be some sort of active proceeding on his part—he must incite or procure or encourage the act," and the whole Court held, that merely holding the stakes to be paid to the winner of a fight in which one of the combatants was killed, was not, of itself, sufficient to make such holder an accessory to a charge of manslaughter. This case of *The Queen v. Taylor* (24) was a peculiar one, and it was not necessary to decide whether the facts would have justified a conviction for aiding and abetting a breach of the peace, as to which a question might possibly be raised. It is unnecessary to multiply authorities upon this point, or to speculate upon the infinite variety of cases in which a person may innocently witness and be a passive spectator of a fight, or any other unlawful or criminal act. Nor is it necessary to express any final opinion whether or not the evidence upon the present occasion would have justified the jury, had they been so minded, in finding the defendants to be aiders and abettors. I confess I have grave doubts whether there was sufficient evidence of aiding and abetting against either. The only question we have to determine is, whether upon mere proof that the defendants were voluntary spectators at the fight, the chairman was right in directing them to find the de-

fendants guilty, and in recording that verdict, in the teeth of the express finding that the defendants were not aiding or abetting. I am of opinion that he was not, and I base my judgment upon this, that no matter how cogent the circumstances may be to establish active encouragement, aiding and abetting on the part of the accused, it is the province of the jury alone to exercise their judgment upon those circumstances, and to say by their verdict whether from them they draw the conclusion of guilt or innocence (see the direction of Chief Justice Mansfield in *Clifford v. Brandon* (25)); and that, however conclusive the evidence may appear to him to be, no Judge has a right to direct a verdict of guilty as a matter of law, until the jury have drawn the inference essential to support such verdict. Since this judgment was written Lord Justice Baggallay, at the Warwick Winter Assize, 1882, in *The Queen v. Hodgkiss and others*, who were indicted for manslaughter, stated his, which I think the correct, view of the law to be, that the mere presence of a person at a prize fight was not in itself aiding and abetting that which was going on. But of course the presence of a person at such a fight must be taken in connection with the surrounding circumstances, which might affect particular individuals, and make all the difference: and in every case it was the province of the jury to determine whether those particular circumstances applied to a certain person, and so brought him within the law. I think, therefore, this conviction ought to be quashed.

HUDDLESTON, B.—I am of opinion that the direction of the learned chairman of quarter sessions was not correct, and that this conviction must be quashed. If he had told the jury that the going to a prize fight to see the combatants strike each other, and being present when they did so, was evidence from which they might find that the defendants countenanced what was going on, and that therefore they might find them guilty, I should have been disposed to support that ruling. But that is not the effect of his summing-up,

(24) 44 Law J. Rep. M.C. 67; Law Rep. 2 C.C.R. 147.

(25) 2 Campb. 358.

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by the qualification he introduced. Quoting words attributed to Mr. Justice Littledale, he, in substance, told the jury that staying at the place was of itself encouragement, and that the mere fact of being present was sufficient to justify a conviction. I cannot believe that the learned Judge, Mr. Justice Littledale, has been accurately reported in this respect; but, if he has been, with great respect for so learned a Judge, I cannot concur in his ruling. The mere staying at the place where a fight is going on is not necessarily encouragement. The detective sent to report what is taking place, and to bring the offenders to justice, cannot be said to be encouraging what is going on; a person casually passing, but who stays to see what happens, and interferes to prevent, or retires in disgust, or is hemmed in so that he cannot retire, cannot be said to be encouraging; the witness mentioned in the fourth paragraph of the case could not be said to be encouraging; yet all of these were present and stayed at the place within the words of the learned Judge. The question of what amounts to encouraging must be a question of fact in each case for the jury, and cannot be one of law. The finding of the jury was, in fact, one of not guilty. They bow with respect to the chairman's direction in point of law; but, by adding that the prisoners were not aiding and abetting, I conclude that they intended to convey that by no act of theirs were they countenancing or encouraging the fight—a conclusion fully supported by the evidence in the case.

MANISTY, J.—I am of opinion that this conviction cannot be sustained. I see no evidence that the fight was a prize fight. In the absence of evidence to the contrary it must be taken to have been an ordinary hostile fight between two angry men, each of whom committed a series of assaults on the other. But whether it was a prize fight or an ordinary fight is, in my opinion, immaterial, seeing that all persons who, being present at a fight, encourage it, are guilty of an assault. In the case of a misdemeanour, all who take part in it are principals, there are no accessories in the technical sense of that term—*The Queen*

v. Greenwood (26). Such being the law, the first question which arises is, whether there was any evidence to go to the jury against the three prisoners, or any of them. All that was proved was, that each of them was seen in the crowd, that they were neither speaking nor doing anything; and as to Coney, that he was so hemmed in as to render it impossible for him to push his way out. I very much doubt whether there was any evidence proper to be left to the jury as against any one of the three prisoners. But, assuming that there was, it remains to be considered whether the direction given to the jury was correct in point of law. The direction was, that "if the prisoners were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not say or do anything." The jury understood, and, as it seems to me, rightly understood, the direction to be that, if the prisoners merely stayed at the place, they, as a matter of law, encouraged the fight by their presence, and they found the prisoners guilty of an assault, adding that they did so in consequence of the chairman's direction of law, though they found that the prisoners were not aiding or abetting. I am of opinion that the direction was erroneous in point of law. If there was any evidence to go to the jury, it raised a question of fact for them—namely, whether the prisoners or any of them by their presence encouraged the fight. No such question was left to the jury, consequently the conviction cannot stand. The only authority in support of the direction that I know of is to be found in the summing up of Mr. Justice Littledale in the case of *The King v. Murphy* (1). No doubt that learned and accurate Judge is reported to have used the very expressions which the chairman in the present case adopted and repeated to the jury. Whether the learned Judge, Mr. Justice Littledale, did direct the jury as he is reported to have done may, I think, well admit of doubt. If he did, I think the direction was erroneous. It is said that, if the ruling of the chairman is not upheld, a great impetus will be given

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to prize fighting. I do not share in that apprehension. It is well-settled law that every person who, by his presence or otherwise, encourages a fight, be it a prize or an ordinary fight, is guilty of a criminal offence—that is to say, of an assault, or manslaughter, as the case may be; but it is for the jury in each particular case to say as a matter of fact whether the accused did, by his presence or otherwise, encourage the combatants to fight. To hold the contrary would, in my opinion, be erroneous in point of law, and very injurious in its consequences. Suppose the fight in question had resulted in the death of one of the combatants, then, if the direction given to the jury was right, every person who was in the crowd was in point of law guilty of manslaughter, though he neither spoke nor did anything, and notwithstanding that in the opinion of the jury he neither aided nor abetted the combatants. I cannot believe such is the law of England. For these reasons, I answer the question submitted to the Court in the negative. If it were necessary to do so, I should be prepared to go further, and hold that the special finding of the jury amounted to a verdict of acquittal. This point is, it is true, not submitted to us by the chairman, but if the Court sees upon the face of the case stated that the conviction is wrong it is their duty to take notice of it.

POLLOCK, B.—In my judgment this conviction should stand. The question stated for the opinion of the Court properly raises that which alone is open for our determination, and the answer to it should I think be, that the direction to the jury was correct. There was ample evidence from which the jury could find, as in effect they did, that what took place between Burke and Mitchell amounted to a prize fight; and this being so, there is clear authority for the direction of the chairman that prize fights are illegal—*The King v. Bellingham* (12), *The King v. Perkins* (4) and *The King v. Hargrave* (23); see also *Hale's Pleas of the Crown*, ch. 39. When once this is established, the only remaining question is whether, looking at the evidence as it affected the three prisoners Coney, Gilliam and Tully, it was sufficient

to support the direction of the chairman, and if so, whether that direction was right in law. In dealing with the evidence as it affects the three prisoners, we must look first at paragraph 4 of the case, to see what was the real character of the fight, as bearing upon the conduct of those who were present, though not taking any active part in it, and the inference to be drawn from such conduct. The facts here set out—the ring of cord, the four blue posts, the six persons within the ring besides the combatants, and the fighting by those two combatants stripped for three-quarters of an hour—all point to a condition of things which would denote to those present and looking on, even if they had not gone to see a fight, that a real fight was taking place. As to the evidence affecting the prisoners, it amounts to this—that there was a crowd surrounding the ring, and that they were in it, and further, as to Coney, that the crowd was so closely packed that he was hemmed in, and could not push his way out. Before I deal with the direction of the chairman which relates to the legal effect to be given to the presence of the prisoners in this particular case, I must notice what appears to me to be the true ground upon which the decisions of Judges have been based, when they have ruled that those who remain and look on whilst a fight is going on encourage it by their presence, and are guilty of an illegal act; and also the wide distinction which exists between the case of persons standing by to witness a prize fight, and that of persons standing by and witnessing an attack by a mob, the setting fire to a building, or any other illegal act of violence, such as was referred to in the course of the argument. With reference to this part of the case, we ought not, when considering what is the true character of an act, to lay aside all knowledge of human nature, and all experience of the habits of mankind. These appear to me to be the basis of, and necessarily to be interwoven with, and form a part of, all law, whether criminal or otherwise; and when I look at the case in this light, I see no true analogy between a crowd of persons voluntarily collected round a fight, and those who in a public street, or elsewhere, are present whilst an illegal act

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(the sight of which in itself cannot reasonably be supposed to give pleasure to any one) is going on. In the one case it is usually the bystanders collected around who create and are responsible for the fight, as a matter of interest and amusement to themselves. In the other, unless there be some overt act, by gesture or word, which denotes assistance or encouragement, it would be contrary to all reason to infer that the bystanders were taking any part in the illegal act. Again, when a fight takes place, but two can fight, and but some half dozen can assist the combatants; it is, however, almost of the very essence of the thing that a large number should be present as mere spectators, who could not consistently with the object of the whole proceeding actively interfere. On the contrary, where other acts of violence take place, it is to say the least more probable that those who intend to encourage them will not remain mere passive spectators, but will in some measure take an active part. In his summing-up to the jury in the present case, acting upon the principle and the ruling to which I have already referred, the chairman, after telling the jury that they were to determine whether or not this was a prize fight, directed them with reference to the three prisoners that "all persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are in point of law guilty of an assault." He added also, from the summing-up of Mr. Justice Littledale in *The King v. Murphy* (1): "If they were not casually passing by, but stayed at the place, they encouraged it by their presence, although they did not do or say anything." In my view of the law, this correctly laid it down as applicable to the particular case in hand. No doubt it did not exhaust the subject or deal with all the possible cases, or all the suppositious cases which were put during the argument before us. It was said that instances might occur of persons being present at a fight such as this, or even at this fight, who yet would not be doing an illegal act. Thus a weak man might be hemmed in by the crowd and so be present against his will; the father or mother of one of the combatants

might be there to dissuade him if possible from entering upon or continuing the contest; a very short man might be at the outer edge of the crowd, and so unable either to see or to apprehend what was going on; and that these persons would not be guilty of an illegal act. This is quite true, but surely it has no bearing upon the facts proved here, nor could the chairman have alluded to such cases without travelling very wide from the facts proved, and distracting the minds of the jury from the question to be considered in the particular case. The chairman's own direction is confined to "all persons who go to a prize fight to see the combatants." The quotation from Mr. Justice Littledale is not so accurate, because it may appear to affirm the proposition that all persons who stay at the place encourage the fight; but even as to this it states what I think is sound law, unless it be taken to include persons staying for some cause which makes it legal, or to include those curious and exceptional instances mentioned during the argument. Few propositions of law can be applied during a summing-up, even in criminal cases, so as to be sufficient and complete *in omnibus*; nor need they be, since the office of a summing-up is not to propound the law exhaustively, but to explain so much of it as relates to and is called for by the particular case which the jury have to try. It only remains to notice the verdict of the jury. They found the three prisoners guilty, but added that it was in consequence of the direction by the chairman of law, as they found that these prisoners were not aiding and abetting. This should be construed in such a manner as to make it reasonable and consistent, and it can be so construed. The jury by their verdict find that the three prisoners by their presence at the fight brought themselves within the chairman's definition of the offence with which they were charged, and thereby they must be taken to have disposed of the point raised in Coney's favour—namely, that he was hemmed in by the crowd. No doubt he was ultimately, but the jury may well have thought that he placed himself where he was voluntarily, and in order to secure a good position whence he could see the fight. No allusion is made in the case to

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aiding and abetting, but, beside those fighting, there were several backers within the ring, and, as I accept the finding, I understand the jury to mean no more than that these prisoners were taking no active part in the fight. For these reasons it seems to me, agreeing as I do with the main propositions of law that have been stated by my learned brothers and commented upon, that this conviction ought to stand.

DENMAN, J.—The three defendants, Coney, Gilliam and Tully, were indicted for an assault. I think there was evidence upon which the jury might properly find that the two men Burke and Mitchell were engaged in an unlawful fight, and that they and their seconds were guilty of one or more assaults. But, as regards the defendants Coney, Gilliam and Tully, I find no facts stated shewing that they did anything to promote the unlawful fight, or the assaults committed; unless the mere fact of being found in the crowd surrounding the combatants is evidence of that kind. The utmost that can be gathered from the facts stated is, that they were for some appreciable time inactive spectators of an unlawful fight. The only question for us is, whether the direction of the chairman was correct. According to my view of that direction it amounted to telling the jury, as matter of law, that merely being found present in the crowd surrounding the combatants was not only evidence, but conclusive evidence, that the defendants were encouraging the combatants, and therefore guilty of the assaults committed by them. If I had been on the jury, I should so have understood the direction, and I think it is evident from the finding of the jury that they did so understand it. For the reasons given by my brother Hawkins in his judgment I entirely concur on both the points argued. I think this direction was wrong, and I therefore am of opinion that the conviction should be quashed.

LORD COLERIDGE, C.J.—The facts are clearly stated in the case submitted to us by the chairman of the Berkshire Quarter Sessions, and the question is whether his direction, which he sets out in words, can

in point of law be sustained. That is the question which, in form, the chairman has submitted to the Judges, and that is the only question which I propose to answer or to discuss. Two points were made in reference to the chairman's direction. As to the first, I conceive it to be established, beyond power of any argument, however ingenious, to raise a doubt, that, as the combatants in a duel cannot give consent to one another to take away life, so neither can the combatants in a prize fight give consent to one another to commit that which the law has repeatedly held to be a breach of the peace. An individual cannot by such consent destroy the right of the Crown to protect the public and keep the peace. To the judgments of Mr. Justice Hawkins and Mr. Justice Cave, which I have had the advantage of reading on this point, both in their reasonings and their conclusions, I give my entire assent. The judgments of Mr. Justice Mathew and Baron Pollock do not, I think, leave anything untouched on the second point, to which I now proceed. I agree with them entirely, and it is only because of the practical importance of the question that I do more than simply express my concurrence. I proceed then to the second question which remains, whether persons other than the combatants who are voluntarily present at a prize fight, and who are there as spectators of the fight, are also, in point of law, guilty of an assault. I mean by the words "as spectators" persons who are present for the purpose only of seeing the fight; and I have stated the question thus because I believe that to be the question intended to be raised, and I think it is the question which is raised, in the case before us. It is not dealing fairly with the chairman, or with the jury, or even with ourselves, to suppose that a variety of questions so absurd that they are answered by mere statement were intended to be put to us when there is a real and important question put which is well worthy of consideration, and as to which, no doubt, there is room for conflicting opinion. I do not trouble myself, therefore, with the question whether the words used would cover the case of a policeman present and doing his best to prevent the

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fight; of a man, policeman or not, present only to procure evidence of a breach of the peace which he is powerless to prevent; of a passer by on foot or in a carriage, who stays long enough to ascertain the character of the fight, and goes upon his way; of some one on the outskirts of a crowd, curious as to the object of it, whose shortness of stature is not aided by any friendly tree. If ever these curious questions, or questions like them, should arise, it may be safely left to juries or to Judges to solve them sensibly. The question I am answering is this: When there is evidence uncontradicted that a man is a spectator of a prize fight—a spectator only, if you will, but a spectator in the sense I have defined, a person who goes to see or stays to see a fight, with no object but to see it—does that evidence warrant a Judge in directing a jury that such evidence, if they believe it, proves that such a person is guilty as a principal in the misdemeanor? I am of opinion that such evidence does warrant a Judge in giving such a direction, and that it is for the prisoner to shew, if he can, that the legal inference from such evidence ought not to be drawn in his case. It is not denied that there are *dicta*—nay, decisions—of single Judges which entirely support the direction of the chairman. Indeed, his charge, as he repeats it to us, is made up of the words of Mr. Justice Patteson in *The King v. Perkins* (4) and Mr. Justice Littledale in *The King v. Murphy* (1). But it is said, and it is true, that these *dicta* or decisions are of single Judges only, and that in none of the cases were the facts exactly the same as the facts in the case before us. To the first objection, I reply that the criminal law is built up of the *dicta* of single Judges, and that I feel no inclination to examine critically and overrule a set of decisions which seem to me founded in good sense and conducive to the public good. Practical wisdom rather than scientific exactness seems to me to be the thing to aim at in a branch of the law which is concerned with the affairs of men generally speaking in their simplest and least complicated forms. In such a case as this the spectators really make the fight; without them, and in the absence of any one to look on and encourage, no two men,

having no cause of personal quarrel, would meet together, in solitude, to knock one another about for an hour or two. The brutalising effects of prize fights are chiefly due to the crowd who resort to them, and if I find Judges of great reputation saying in various phrases, and on various occasions, what Mr. Justice Littledale and Mr. Justice Patteson said in the cases I have mentioned, and that, in consequence, the voluntary spectators of a prize fight have been convicted of an assault, I will, if I can, affirm such a conviction, and uphold the authority of the Judges on whose decisions it is based. I reply to the second objection that it hardly ever happens that the circumstances of two cases are exactly the same, but the words of the Judges are general, and will include the case before us, and that I see no distinction in principle between the persons to whom the Judges applied their doctrine and the persons to whom it is sought to apply the doctrine here. If a surgeon who attends a duel to save if possible the lives therein imperilled attends it as a criminal, I can see no sort of reason why the spectator of a prize fight should not, if there be fair authority for the position, be held as guilty as the prize fighters themselves. It must be remembered that in all these cases of constructive assaults and constructive felonies we get beyond the region of actual fact into that of positive legal inference. A second in a duel, perhaps, does no physical act at all; a man who stands outside a house while his fellow burglar goes inside and is guilty of violence, does not, in actual fact, break and enter; yet such persons are wrongly or rightly held as guilty as the actual duellist or the actual burglar. The man who keeps the ropes, or goes round to collect contributions, no more really assaults any one than a mere spectator; but some of my learned brothers, at any rate, would hold that such men are properly to be held guilty of assault. Once granted that an actual physical participation in the assault is not necessary, it seems to me that there is no legal principle in distinguishing between one set of spectators and another, using the word spectator in the sense which I have above defined; and I protest, with all possible respect, against drawing a line

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which the authorities hitherto have not drawn, which I have given my reasons for thinking there is no legal principle in drawing, and which it will, I think, be very mischievous in practice to draw. I am of opinion that the three prisoners here must be taken on this evidence to have been spectators of a prize fight in the above-mentioned sense; that the authorities shew that such spectators are guilty of assault; and that, therefore, the direction of the chairman was correct, and the conviction should be affirmed. It is true that the jury have expressed their opinion that they did not aid or abet; but then, as they found the prisoners guilty, they must be taken to have meant that the prisoners did not do any outward act of aiding or abetting; which, for the reasons I have already given, appears to me immaterial.

Conviction quashed.

Solicitors—Rawson & Awdry, Great Marlow, for prisoners; the Solicitor to the Treasury, for prosecution.

[CROWN CASE RESERVED.]

1882. }
March 25. } THE QUEEN v. MORBY.*

Manslaughter—Evidence—Neglect of Parent to provide Medical Aid for Child—Absence of Proof that death was thereby accelerated.

If a parent neglects to provide medical aid for his child of tender years, and the child dies, the parent cannot be convicted of manslaughter unless it is proved affirmatively that the death was caused or accelerated by such neglect; and medical evidence, on behalf of the prosecution, that the child's life probably might have been prolonged or saved by the parent calling in medical aid, is not sufficient evidence to support a conviction.

CASE reserved by Hawkins, J.

The prisoner was convicted before me at the Central Criminal Court of the man-

* *Coram* Lord Coleridge, C.J.; Grove, J.; Stephen, J.; Mathew, J.; and Cave, J.

slaughter of his son, Abraham Morby, a child under the age of fourteen, who lived with him and was in his custody at Woolwich.

The prisoner had ample means and opportunity to provide adequate food, clothing, medical aid and lodging for his child, and he did provide all these things except medical aid; this he, under the circumstances hereinafter stated, wilfully neglected and omitted to provide, because, being one of the "peculiar people," he did not believe in medical aid, but trusted in prayer and anointment alone.

The deceased child, who was eight years old, was, on the 27th of December last, known by the prisoner to be suffering from confluent small-pox. Of that disease it died on the 8th of January. The jury found that it was reasonable and proper that the prisoner should have called in and provided medical aid for it, but that he wilfully neglected and omitted so to do.

No medical man saw the deceased during life, but Dr. Sharpe, who made a *post-mortem* examination of the body, stated that death was undoubtedly due to small-pox—that small-pox is a disease requiring medical advice and skill, great attention and great care, and, if not attended to, is calculated to spread.

This question was put to Dr. Sharpe: "In your opinion, do you think the life of the deceased might have been probably prolonged if medical skill had been called in?" to which he answered thus: "Probably; but I would rather put it in this way—that the chances of the boy's life would have been increased by having medical advice."

The prisoner's counsel admitted that he could not contend that the prisoner was not guilty of a breach of the statutory duty imposed on him by 31 & 32 Vict. c. 122, s. 37, but he submitted that the death was not caused by that breach of duty. I held that, if death was accelerated thereby, it would be sufficient. Upon this the prisoner's counsel urged that there was no proof that death was so accelerated. Thereupon Dr. Sharpe was recalled, and the following questions were put to him, to which he gave the answers subjoined:

"In your judgment, if medical advice

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and assistance had been called in at any stage of this disease, might the death have been averted altogether?"

"I can only answer that by saying that it might have been. Ours is not a positive science. It might have been averted if medical aid had been called in at any earlier stage. I am unable to say whether it probably would. I might say probably as to whether life might have been prolonged. I cannot say that death would probably have been averted. I think it probable that life might have been prolonged. I can only say probably might, because I did not see the case while living. I am unable to say that life would probably have been prolonged, because I did not see the case during life. Had I done so I might have been able to answer the question."

The prisoner's counsel still insisted there was no proof that death was caused or accelerated by the prisoner's breach of duty.

I thought it best to submit the evidence to the jury, and to reserve the point, if necessary.

I accordingly asked the jury whether the life of the child would, in their judgment, have been prolonged if medical aid had been called in when the prisoner became aware of the fact that deceased was suffering from small-pox?

To this question they answered that it would.

I then told them that if they so found, and that the death of the child, though it could not be certainly averted altogether, was nevertheless accelerated by the wilful neglect of the prisoner to provide such medical aid when it was reasonable and proper and his duty to provide it, he having the means and opportunity to do so, he was guilty of manslaughter.

On this direction the jury found him guilty.

I reserve for the opinion of the Court of Criminal Appeal these two questions: First. Whether there was any evidence that the life of the child would have been prolonged for any period of time, however short, if the prisoner had called in and provided medical aid—or, in other words, that death was accelerated by his breach

of duty. If there was I am satisfied with the finding of the jury.

Secondly. Whether, assuming the prisoner to have accelerated the death of the child by his breach of duty in wilfully neglecting to provide for it medical aid as aforesaid, he was properly convicted of manslaughter.

If either of these questions are answered in the negative the conviction is to be quashed. If both are answered in the affirmative it is to be affirmed.

The case not being one demanding punishment I have released the prisoner on his own recognisances, to appear for judgment if he should be required to do so—see 31 & 32 Vict. c. 122. s. 37: *The Queen v. Downes* (1).

D. Kingsford, for the prisoner.—The evidence given does not support the charge of manslaughter; it merely shews that medical aid might have postponed or averted death, or might not. It was the duty of the prosecution to shew that the non-supply of medical assistance by the prisoner was the direct and proximate cause of the child's death, or of the acceleration of his death.

Poland (Mead with him).—The evidence shewed that the child's life might possibly have been prolonged or saved by medical aid, and it was for the jury to say whether, in fact, it would have been.

LORD COLERIDGE, C.J.—We are all clearly of opinion that this conviction cannot be supported. It is not enough to sustain the charge of manslaughter to shew that the parent had neglected to use all reasonable means for preserving or prolonging the child's life; it is necessary to shew that what the parent had neglected to do had the effect of shortening the child's life. Affirmative proof is required, and this the medical witness called for the prosecution was unable to give. He stated that, in his opinion, the chances of life would have been increased by having medical advice, that life might possibly have been prolonged thereby, or, indeed, might probably have been, but that he

(1) 45 Law J. Rep. M.C. 8; Law Rep. 1 Q.B. D. 25.

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could not say that it would, or, indeed, that it would probably, have been prolonged thereby. The direction of the learned Judge, though right in point of law, is not applicable to the facts proved. The conviction cannot be sustained.

GROVE, J.—I am of the same opinion. The learned Judge so directed the jury that by their verdict they say what the medical man expressly declined to say, that is, that the boy's life would have been prolonged by calling in medical assistance.

STEPHEN, J.—I am of the same opinion. This matter might be made plain if the evidence were to go a little more into detail. Suppose the medical witness had been asked whether the administration of such-and-such medicines which had not been administered would have been of service in prolonging the boy's life, and he had answered that "probably they might have been, but that he could not undertake to say so, not having seen the case." Would any one say that the neglect to administer such medicines would make the father guilty of manslaughter? It is probable that the prisoner was guilty of an offence under section 37 of 31 & 32 Vict. c. 122 in not providing medical assistance, but it does not follow that he was guilty of manslaughter, which requires it to be shewn that the result of the neglect was to cause death, whereas here it was left in doubt; and I have always understood that to warrant a conviction the minds of the jury must be free from any reasonable doubt.

MATHEW, J., and CAVE, J., concurred.

Conviction quashed.

Solicitors—The Solicitor to the Treasury, for prosecution; E. Kimber, for prisoner.

[CROWN CASES RESERVED.]

1882. }
March 12, 18. } THE QUEEN v. NEWMAN.*

Fraud by Agent—Solicitor—Entrusted with Property for Safe Custody—24 & 25 Vict. c. 96. s. 76.

The defendant, a solicitor, having been entrusted with money to invest on mortgages, fraudulently misappropriated it to his own use:—Held, that the money so entrusted to the defendant, was not property entrusted to him for "safe custody" within the meaning of section 76 of 24 & 25 Vict. c. 96.

CASE reserved by Bowen, J.

The prisoner in this case was a solicitor of Southampton, and was found guilty at the Winchester Assizes of an alleged offence against section 76 of 24 & 25 Vict. c. 96 (1).

The indictment charged that he, being an attorney, and being entrusted with the property of another person for "safe custody," did, with intent to defraud, convert and appropriate the same to his own use.

It appeared that at various times during the lifetime of one Thomas Dawkins, since deceased, the prisoner had been entrusted with divers sums of money from the said Thomas Dawkins, as his solicitor, in order that the prisoner might lay out and invest the same on mortgages on behalf of the said Thomas Dawkins. The prisoner always subsequently represented that he had acted according to his instructions, and that the proper mortgages had been duly effected from time to time, and that the moneys entrusted to him were outstanding upon such mortgages; and from time to time the prisoner paid over to the said Thomas Dawkins divers sums as and for interest

* *Coram* Lord Coleridge, C.J.; Denman, J.; Stephen, J.; Mathew, J.; and Cave, J.

(1) By 24 & 25 Vict. c. 96. s. 76, "Whosoever, being a banker, merchant, broker, attorney or agent, and being entrusted, either solely or jointly with any other person, with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted, shall be guilty of a misdemeanour."

The Queen v. Newman, C.C.R.

supposed to be received by the prisoner from the various supposed mortgagors.

It was discovered, however, after the death of the said Thomas Dawkins, by Robert Ingram and Charles Edward Dawkins, the trustees and executors under his will, and it was established in evidence at the trial before me, that the said mortgages were wholly fictitious and non-existent, and that the prisoner, instead of investing the money entrusted to him upon any such mortgages, had fraudulently and improperly appropriated the said money to his own use.

The learned counsel for the prisoner, at the close of the case for the prosecution, submitted that there was no evidence of any offence having been committed as laid in the indictment, and that money entrusted to the prisoner to lay out on mortgage was not properly entrusted to him for "safe custody," under section 76 of 24 & 25 Vict. c. 96. The learned counsel cited *The Queen v. Cooper* (2) and *The Queen v. Fullagar* (3). I stated that I should express no opinion on the point, but would reserve it for this Court; but for the purposes, however, of the day I should direct, and I accordingly did direct the jury that, if they were satisfied that money was entrusted to the prisoner to be invested on mortgage, and to be kept safely in his own hands till such mortgage was effected by him, and if, instead of investing the money so entrusted to him, he converted it fraudulently to his own use, they should find the prisoner guilty.

The jury accordingly found the prisoner guilty.

I submit to the opinion of the Court, whether this direction was correct in law. If it was, the prisoner is rightly convicted; if it was not, the conviction ought to be quashed.

Hon. B. Coleridge, for the prisoner.—The indictment is framed under section 76 of 24 & 25 Vict. c. 96, which deals only with property, including, as appears by the definition given in the statute, money entrusted for "safe custody." Section 75 deals with the misappropriation of money

(2) 43 Law J. Rep. M.C. 89; Law Rep. 2 C.C.R. 123.

(3) 41 Law Times, N.S. 448.

entrusted for investment or for any particular purpose, and requires a written direction to be proved; and also deals with certain frauds as to chattels and valuable securities, but as to these, requires no written direction. Section 76 requires no written direction to be proved, but deals with, *inter alia*, money entrusted for safe custody, as distinguished from investment. So that if the money is entrusted for investment a written direction is required, but not if it is entrusted for safe custody. The Legislature has distinguished between the misapplication of money entrusted for investment, and money entrusted for safe custody. In *The Queen v. Cooper* (2) the prisoner, a solicitor, received money for investment, but which he misappropriated, and it was contended on his behalf that he had the money for safe custody until investment, yet the Court held that the money was really entrusted for investment, and not for safe custody within the meaning of section 76. In *The Queen v. Fullagar* (3) the prisoner, a solicitor, was indicted under both sections, and Hawkins, J., thus put the case—if the prisoner was entrusted with the money for investment it was by letters, therefore there was a direction in writing within section 75, whilst if the letters did not amount to a direction to invest them, he had the money for safe custody within section 76.

Bullen (*Tickell* with him).—The jury have disposed of the matter by their finding, which was that the prisoner had the money for safe custody until investment. In all cases of solicitor and client, the solicitor holds for safe custody until investment. In *The Queen v. Cooper* (2) there was no particular sum of money that the prosecutor could call his own, whilst here there was a direct handing to him of the property. *The Queen v. Fullagar* (3) is a similar case to the present one.

Cur. adv. vult.

LORD COLERIDGE, C.J.—In this case we are called upon to determine the true construction of section 76 of 24 & 25 Vict. c. 96, an Act for amending and consolidating the law relating to larceny and other similar offences, and this section is found under the heading of "Frauds by agents, bankers or factors."

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Section 75 of the Act is substantially divided into two parts, the first dealing with the case of a banker, merchant, broker, attorney or other agent entrusted with any money with directions in writing to apply it in a particular way. If under such circumstances the agent misappropriates the money in violation of good faith, and contrary to the terms of the written direction, he is within that part of the section. The second part deals with the case of an agent misappropriating any chattel or valuable security entrusted to him for safe custody or for any special purpose. Although the punishment provided is in each case the same, these two offences are different in idea and in fact, and the distinction is that if money is entrusted with directions in writing, the particular coins or notes entrusted are not expected to be kept intact, so long as the agent obeys his instructions by duly employing an equivalent sum of money. On the other hand, the idea of entrusting a security for a special purpose is that the specific thing entrusted shall be kept intact for the benefit of the depositor.

An indictment framed under either part of section 75 would not have been applicable to the present case; there were here no instructions in writing under the first part, and no specific chattel entrusted under the second part of the section.

But section 76 goes on to say that if an agent, being entrusted "with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so entrusted," he shall be guilty of a misdemeanour. This provision appears to me to enlarge the latter part of section 75, and makes it to include certain things when entrusted for safe custody which would otherwise have required instructions in writing. The word "property" undoubtedly includes money, by virtue of the interpretation clause in section 1. Therefore, if a specific sum of money were entrusted for safe custody, and not for investment, it would clearly be within section 76.

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Now, the question is whether the facts in this case bring the prisoner within the provisions of section 76. I think they do not. The statement in the case is that the prisoner "had been entrusted with divers sums of money from the said Thomas Dawkins, as his solicitor, in order that the prisoner might lay out and invest the same on mortgages on behalf of the said Thomas Dawkins." The object was that he might invest the sum of money, not the coins; the cheques or symbols of money were entrusted, not to be kept, but to be laid out. If there had been any direction in writing, the prisoner would clearly have been within section 75, but the first part of section 75 does not mean the same thing as section 76; in section 75 safe custody is contradistinguished from purposes of investment in which a direction in writing is a condition precedent to the offence described.

This would be my opinion if the case were bare of authority. But in *The Queen v. Cooper* (2) the facts were that Whittaker had obtained a loan of 50*l.* from another person on a deposit of some title-deeds, and employed the defendant to raise a further loan. Accordingly the defendant obtained 140*l.* from a Miss Taylor, which he ought to have employed in paying off the previous loan, and handing the balance to Whittaker. He did not pay off the previous loan, and he only paid 60*l.* to Whittaker, keeping him in ignorance that so much as 140*l.* had been obtained, and paying interest on the 140*l.* without Whittaker's knowledge—in fact, misappropriating the 140*l.* Under these circumstances the defendant was indicted under section 76, but this Court held that section 76 was out of the question because there had been clearly no improper dealing with any money entrusted for safe custody. But if the view now urged by counsel for the prosecution were correct, the money ought to have been held to have been entrusted for safe custody. The Court held that money entrusted for investment was clearly not entrusted for safe custody, and the case bears strongly in favour of the prisoner in this case.

In *The Queen v. Fullagar* (3), the Court came to a conclusion which does not appear to conflict with *The Queen v.*

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Cooper (2). Money was received by the attorney, and he was requested by the owner of the money to keep it until a letter should be received from one Goldsmith, pending which to hold it safely. It was held that the facts brought the defendant within section 76, and it may well be that the actual intention was that the coin, or the symbols of coin, were to be entrusted for safe custody. The judgment of the Court proceeded on that footing, and if it were not so the decision would be in conflict with the case of *The Queen v. Cooper* (2).

The facts stated before us do not supply the materials which must necessarily be supplied in order to bring this case within section 76, and inasmuch as we can only deal with the facts stated, I am of opinion that this conviction was wrong and must be quashed.

DENMAN, J.—I have very great difficulty in saying that the direction of the learned Judge at the trial was incorrect in point of law. If the evidence had been that there was entrusted to the prisoner a specific sum of money with specific directions to keep it safely till a certain day, and then to invest it, I think the case would fall within section 76, and, indeed, I read *The Queen v. Fullagar* (3) as an authority that this would be so. The difficulty here is that it is by no means certain that the Judge did not lead the jury to think that if Dawkins had handed sums of money to the prisoner from time to time with no specific directions, and if the prisoner had changed the money into money of a different form, say cheques into notes, and had done this fraudulently instead of doing what he ought to have done, they would have been justified in finding him guilty. I am not at all confident that we are right in taking the view we do because of the wording of the case. "Money" may mean specific sums of money entrusted, for aught we know, with instructions to invest them, it being thoroughly understood that there would be an interval during which the defendant was to keep them in safe custody. But, as Lord Coleridge pointed out, the money may be supposed to be in cheques or other usual form, with instructions to get a mortgage as soon as possible, in which case it could hardly be entrusted for safe custody.

Money so entrusted would be entrusted for a specific purpose, which would fall under section 75, if accompanied by directions in writing, but not under section 76.

In the case of *The Queen v. Cooper* (2), an attorney was employed to raise a loan on mortgage, and hand over the balance, after certain deductions, to the mortgagor. It was held that no property had been entrusted for safe custody under section 76. This may mean that there was no permission given to him to hold the money even for a single moment; but it appears to me to be not unreasonable to hold, and might still be held in some future case, that if specific money be entrusted for investment it might be treated as entrusted for safe custody for a reasonable time until opportunity for investment should arise. But in the case now before us this does not appear to have been so, and I, therefore, agree that the conviction should be quashed.

STEPHEN, J.—I am of the same opinion—though not without considerable reluctance, inasmuch as a gross fraud will have to go unpunished.

The question turns entirely upon the construction of section 76 of the 24 & 25 Vict. c. 96. The old common-law definition of theft was in many instances found too narrow, and accordingly we find, by degrees, exceptions being engrafted upon it by statute—as, for instance, in the law of embezzlement—which, however, referred only to frauds by servants, and left untouched the question of frauds by agents, which were first dealt with in the reigns of George 3 and George 4 by sections which are repeated in section 75 of the Act now under our consideration. Section 76 is a newer introduction. It is first found in the Act of 1857, and is repeated in the present Act. I only refer to the history of these sections as a reason why I am less impressed with the argument for the prosecution that the sections would overlap if construed in the way we propose to construe them. Many cases might be imagined where these sections would overlap, and I do not feel constrained to construe section 76 in such a way as to include no cases which would fall under section 75.

I do not find any fault whatever with the direction of the learned Judge as it

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stands. I believe it is in full harmony with the decided cases; but, taken together with the facts stated in the earlier part of the case, I think it is wrong. I think the Judge ought to have told the jury that there was no evidence upon which they could say that the money was ever entrusted for safe custody within section 76. If money is entrusted to an agent on the terms that he is to keep it by him and then lay it out on mortgage, I should say it was an entrusting for safe custody within section 76. I consider the case of *The Queen v. Fullagar* (3) a direct authority for this. Another state of things may exist which is not negatived here, and which may prevent the statute from applying: the instructions may have taken something of this form:—"I wish to keep a balance of 500*l.* always to my credit with you against which to draw; but whenever my balance exceeds 1,000*l.*, I instruct you to invest in certain securities." If this were fraudulently invested, it would clearly not be within section 75, because there would be no money entrusted, it would rather be in the nature of money lent. In the present case we have no knowledge whether money in any specific form was entrusted, or any specific direction given to keep it, or whether it was simply paid by cheque, with, perhaps, a current debtor and creditor account. If the latter were the true state of things, there could clearly be no offence within section 76. Again, there is no evidence of what was to be done with the money in the interval between the entrusting and the investing; therefore it is impossible to conclude that it was entrusted for safe custody during that interval. On this ground alone I think the direction wrong. The learned Judge should have stopped the case, as there was no evidence for the jury.

This view appears to me to be independent of the authority of *The Queen v. Cooper* (2). I am sorry not to be able to take the same view of that case as my Lord. I do not wish it to be understood that anything I have said implies any disagreement with that case, but I cannot help thinking that there may have been other facts upon which the judgment proceeded. The attention of the Court was apparently directed chiefly to section 75, and section 76 is very briefly referred to. It is of course un-

desirable to express any opinion as to what may have been the reasons why they considered section 76 to be out of the question, but it is to be observed that the money was in that case not entrusted by the person defrauded, but by the mortgagee, and it is by no means clear that that fact alone would not have prevented the application of section 76. On the whole, I am of opinion that the conviction cannot stand.

MATHEW, J.—I am of the same opinion.

CAVE, J.—I concur in this judgment, for the reasons that have been stated by my Lord.

Conviction quashed.

Solicitors—J. Emanuel & Co., agents for Bell & Taylor, Southampton, for prisoner; G. Feltham, Portsea, for prosecution.

1882. { THE SCHOOL BOARD ATTENDANCE
April 28. { COMMITTEE OF BELPER UNION
(appellants) v. BAILEY (respondent).

Elementary Education Acts, 1870 (33 & 34 Vict. c. 75. s. 74), 1873 (36 & 37 Vict. c. 86), 1876 (39 & 40 Vict. c. 79), 1880 (43 & 44 Vict. c. 23)—Causing a Child to attend School—Reasonable Excuse.

The respondent, an engine driver, was summoned for not causing his child to be sent to school in accordance with the by-laws made under 33 & 34 Vict. c. 75. s. 74, and in force in the district.

By-law 2 provided as follows: The parent of every child of not less than five nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse—First, that the child is under sufficient instruction in some other manner; secondly, that the child has been prevented from attending school by sickness or an unavoidable cause; thirdly, that there is no public elementary school open which the child can attend within two miles.

At the hearing of the summons it was proved that the child had invariably been sent from home in proper time; that on two occasions only, out of a possible 158

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attendances, had the respondent been informed that the child had arrived too late, and that on both those occasions the respondent's wife had corrected the child.

The magistrates having held on the above facts that the respondent had a reasonable excuse for not causing his child to be sent to school,—

Held, that the magistrates were justified in so holding.

CASE stated by magistrates under 20 & 21 Vict. c. 43.

The appellants, who are the School Attendance Committee of the Belper Union, preferred an information under the Education Acts, 1870, 1876 and 1880, against the respondent, who was an engine driver residing at Denby, in the appellants' district, charging that the respondent being the parent of a child named Richard, over five and under thirteen years of age, had neglected and violated without reasonable excuse the by-law made by the appellants, in this, that he had not caused the child to attend a public elementary school selected for the child (1).

At the hearing of the summons a certificate, in conformity with the Elementary Education Act, 1873, s. 24. sub-s. 5 (2),

(1) The by-laws made by the appellants, under 33 & 34 Vict. c. 75. s. 74, and duly sanctioned by order of Her Majesty in Council on the 18th of May, 1881, provide that—

(ii.) The parent of every child of not less than five nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse, namely—

1. That the child is under sufficient instruction in some other manner.

2. That the child has been prevented from attending school by sickness or an unavoidable cause.

3. That there is no public elementary school open which the child can attend within two miles, measured according to the nearest road from the residence of such child.

(iii.) The time during which every child shall attend school shall be the whole time for which the school selected shall be open for the instruction of children of similar age.

(2) 36 & 37 Vict. c. 86. s. 24. sub-s. 3: "In any proceeding for an offence under a by-law, the Court may, instead of inflicting a penalty, make an order directing that the child shall attend school, and that if he fail so to do, the person on whom such order is made shall pay a penalty not exceeding the penalty to which he is liable for failing to comply with the by-law."

under the hand of the principal teacher of the public elementary school at Denby, was put in to shew that from the 18th of May, 1881, to the 23rd of September, 1881, the respondent's child had only made sixty-six attendances out of a possible 158, but the certificate only shewed that the child was not present at the marking of the register—that is, between 9.15 to 9.30 A.M. and between 2 and 2.30 P.M., and the teacher had no record of the children who came late.

It was proved that the child had invariably been sent from home at such an hour as would enable him to arrive at school at the proper time, and on two occasions only had the respondent been informed that the child had arrived too late. On both occasions the respondent's wife had corrected the child for loitering on his way to school.

The magistrates dismissed the summons, finding as facts—first, that there was not sufficient evidence to prove that the respondent's child had not attended the school during the whole time it was open for instruction of children of a similar age. Secondly, that the respondent, having caused his child to be sent away from home in time to arrive at school in proper time, and not having received any notice that it had not done so (except on two occasions, on which the child was corrected), had done all that could be reasonably expected of him to secure the attendance of the child at school, and had reasonable ground for believing and did believe the child was duly attending school, and had, therefore, a "reasonable excuse" for not "causing the child to attend school."

From this decision appeal was now brought.

Mellor, Q.C., for the appellants.—The by-laws (1) require the parent to cause the child to attend school. It is the duty of the parent to compel the child to attend school, and the law requires an effective

Sub-section 5: "A certificate purporting to be under the hand of the principal teacher of a public elementary school, stating that a child is or is not attending such school, or stating the particulars of the attendance of a child at such school, or stating that a child has been certified by one of Her Majesty's inspectors to have reached a particular standard of education, shall be evidence of the facts stated in such certificate."

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attendance—*Saunders v. Richardson* (3). "Causing" the child to attend, means, if necessary, taking the child himself. The by-laws point out what constitutes a reasonable excuse; but the facts of this case do not come within any of those excuses. If the decision of the Justices is upheld it will be open to any parent to set up this excuse. The Justices should have made an order, under 36 & 37 Vict. c. 86. s. 24. sub-s. 3 (2), directing that the child shall attend school.

GROVE, J.—I am of opinion that the Justices have come to a right conclusion. They have found, as a fact, that there was a reasonable excuse, and I cannot say that they are wrong. The facts shew that the child was sent by the parent every day in time to go to school, and that only on two occasions had the parent reason to believe that the child had arrived late, and that on those two occasions the child had been corrected for loitering on the way. There seems to me to be good ground on which to found a reasonable excuse.

The Act declares that the parent shall cause the child to attend school, and I quite agree that such attendance must be an effective attendance, but then the Act provides that a reasonable excuse shall relieve the parent. Three instances of a reasonable excuse are then appended, but they do not exhaust the instances of reasonable excuse, and are not intended to do so. The words of the Act are "unless there be a reasonable excuse." Those that are mentioned are three of the more prominent instances which are likely to occur. It is left to the Justices to judge whether the excuse is reasonable. If in this case we were to hold that the facts do not constitute a reasonable excuse, it would be tantamount to a direction that the parent should be obliged to accompany the child to school, the parent would have to go himself, because in that view of the case the employment of an elder child or a servant would not exonerate the parent from his liability.

Such an obligation would be impracticable. It must not be understood that the parent is in no case to be liable where the child is despatched in proper time, each

case must depend on its particular circumstances. All I mean to hold is that in the present case the Justices were right in holding that a reasonable excuse for non-attendance was put forward on behalf of the parent.

LOPES, J.—The parent was summoned for not causing his child to attend school, and the Justices have refused to convict him on the ground that there was a reasonable excuse. I am of opinion that the Justices were perfectly right. The by-law provides that the parent of every child of not less than five years, nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable excuse for non-attendance. According to the cases the attendance must be an effective attendance.

In the present case the father took every possible means in his power to comply with the by-law: he saw that the child was started from home in proper time, he believed that the child reached the school in proper time, except on two occasions out of a possible 158 attendances, and on those two occasions the child was corrected. It is, therefore, clear that he did all that he could. It is said that the parent ought to have caused the child to attend school by sending some one with it. How is he to do that? The father is absent all day earning a livelihood for his family, the mother engaged at home attending on the younger children, and there is no servant or elder child who can be sent.

It is also said that the excuse put forward was not reasonable, because it was not within the meaning of any of the excuses set out in the Act. But the Act merely intends to state that an excuse, if reasonable, will be sufficient. The three excuses set out are mere illustrations, they by no means exhaust the instances of reasonable excuse, and there must be many others.

I agree, therefore, that this decision must be confirmed.

Appeal dismissed; leave to appeal refused.

Solicitors.—Warriner & Cross, agents for W. B. Hextall, Derby, for appellants.

1882. }
May 2. }

Ex parte ELSDON.

Metropolis Management Acts (18 & 19 Vict. c. 120, and 25 & 26 Vict. c. 102)—Practice—Right of Appeal—Order made under 25 & 26 Vict. c. 102, s. 75—Demolition of Building—Appeal in respect of Penalties and Forfeitures—Meaning of Forfeiture.

By the *Metropolis Management Act, 1855, s. 231, which is incorporated with the Metropolis Management Amendment Act, 1862, any person aggrieved by any adjudication or determination of any Justice "with respect to any penalty or forfeiture under that Act" may appeal to the sessions.*

By section 75 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), the erection of any building in any street beyond the general line of buildings is prohibited, and it is provided that for any infringement of that provision the offender may be summoned before a Justice, who may order the demolition of the building, and make an order for costs:—

Held, that the right of appeal given to sessions with "respect to any penalty or forfeiture" did not include proceedings taken under the 75th section of 25 & 26 Vict. c. 102.

This was a rule calling upon the Justices of Middlesex to shew cause why a writ of *mandamus* should not issue commanding them to hear an appeal brought by Mr. Elsdon against an order made by a Justice under the provisions of the *Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 75 (1), for*

(1) The *Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 75, enacts that no building shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street, and enables the vestry or local board to summon an offender before a magistrate, who, if the case is proved, "shall make an order in writing directing the demolition of any such building or erection, or so much thereof as may be beyond the general line . . . within such time as such Justice shall consider reasonable, and shall also make an order for the payment of the costs incurred up to the time of hearing." By sections 110 and 111 the *Metropolis Management Act, 1855,**

the demolition of a building and for payment of costs.

The sessions declined to hear the appeal on the ground that they had no jurisdiction, and the only question argued was whether any right of appeal was given from an order made under 25 & 26 Vict. c. 102, s. 75.

Channell, for the applicant.—It is submitted that the sessions had jurisdiction to hear the appeal. The 18 and 19 Vict. c. 120 and 25 & 26 Vict. c. 102, are to be read as one Act, and under section 231 of the former Act an appeal is given to sessions to a person aggrieved by any adjudication with respect to "any penalty or forfeiture." It must be admitted that these words, as used in 18 & 19 Vict. c. 120, have relation only to a pecuniary penalty—something which can be paid. And the same construction must also be given to these words in some of the provisions in 25 & 26 Vict. c. 102, as, for instance, section 107, which speaks of the "payment of any penalty or forfeiture"—see *The Vestry of Bermondsey v. Johnson* (2). An order made under section 75 of 25 & 26 Vict. c. 102, works what is in popular language "a forfeiture," besides entailing the payment of costs, and the right of appeal given with respect to any penalty or forfeiture may fairly be extended to include such a case.

LORD COLERIDGE, C.J.—I am of opinion that this rule must be refused. The question raised is doubtless an important one, but it is, in my judgment, free from doubt. The question is whether an appeal lies against a proceeding taken under the 75th section, which enables a Justice in certain cases to make an order in writing on an owner or occupier directing the demolition of a building, or so much thereof as may be beyond the general line of a street fixed in manner therein specified. The provision and this Act "shall be construed together as one Act."

By the *Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), s. 231, "any person aggrieved by any adjudication or determination of any Justice or Justices, with respect to any penalty or forfeiture under this Act, may appeal to the general or quarter sessions."*

(2) 42 Law J. Rep. M.C. 67; Law Rep. 8 C.P. 441.

Ex parte Elsdon.

is by no means an unreasonable one, and tends to ensure the regularity of streets; moreover it involves no forfeiture of property, but merely takes away certain incidents in respect of such property for the public benefit. Nothing is said in terms about any right of appeal in the case of a person who considers himself aggrieved by a proceeding taken under the 75th section; and the question is whether, no such appeal being expressly given, the general words of the later or earlier Act are sufficient by fair implication to confer any such right. Now there can be no appeal unless it is given, and the terms giving such a right must be reasonably express. Do such terms exist? I think not. The provisions of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), are incorporated with those of the Act of 1862; and under the 231st section of the former an appeal is expressly given to the sessions against the adjudication or determination of any Justice "with respect to any penalty or forfeiture," words which Mr. Channell admits are only applicable in the earlier Act to money payments or forfeiture, and therefore would not (unless an extended meaning is given to them) include a case like the present. But Mr. Channell has urged that the provisions of the earlier Act being incorporated with the later Act a right of appeal was intended to be given in a case of this kind. It is certainly not given in express terms, and there is a great difficulty to my mind in bringing a proceeding of this kind within the reasonable sense of the words "penalty or forfeiture." Moreover I think the words are intended to be used in exactly the same sense in both Acts. In the Act of 1862, c. 102, it is enacted that "every penalty or forfeiture imposed by this Act, and made recoverable by a summary proceeding, may be recovered before any Justice of the peace in manner provided by 11 & 12 Vict. c. 43," the *ipsissima verba* of the 227th section of the earlier Act. It is admitted that under the provisions of the earlier Act such a proceeding as this would not be included, and I think the fact that the same words are used in both Acts is a strong argument to shew that they were intended to receive the same construction. I think, therefore, that the

sessions properly declined to hear this appeal, and that this rule must be refused.

GROVE, J.—I am of the same opinion. The question of hardship only becomes important if there is any reasonable doubt of the meaning of the statute. The words "penalty and forfeiture" clearly relate to a sum inflicted. For instance, in section 177 of the Act of 1855, the words are "forfeit for every such offence such sum," section 105 "forfeit and pay," and in the 70th and 105th sections of the second Act these words will be found used in a similar sense. There is nothing, therefore, to shew that the words "penalty or forfeiture" are intended to have any wider signification in the second Act than they have in the former one. If we were to hold that such a right existed in the present case we should be legislating instead of interpreting a statute. I therefore agree with my Lord that we ought not to grant a rule.

Rule refused.

Solicitors—Last & Sons, for applicant.

1882. } THE QUEEN v. THE JUSTICES OF
Feb. 24. } MONTGOMERYSHIRE.

Bastardy—Appeal—7 & 8 Vict. c. 101. s. 4—8 & 9 Vict. c. 10. s. 3—*Summary Jurisdiction Act*, 1879 (42 & 43 Vict. c. 49), ss. 31, 32, 54 and 55.

An appeal against an order in bastardy may be brought either on the conditions prescribed by the Bastardy Acts or on those prescribed by the Summary Jurisdiction Act, 1879. The 54th section of the Summary Jurisdiction Act, in applying that Act to "an appeal from an order in bastardy," amongst other things, does not apply the appeal sections of that Act exclusively of previously existing appeal sections in the Bastardy Acts, but applies the Act generally to orders in bastardy, so as to remove doubts whether they are "orders or convictions."

Rule for a *mandamus* to Justices in quarter sessions to hear the appeal of Ellis Jones against an order in bastardy.

The Queen v. Justices of Montgomeryshire.

On the 21st of October, 1881, the order in question was made by the Justices. Notice of appeal was given to the respondent within twenty-four hours. Within seven days from the order the appellant entered into recognisances for the payment of costs, and gave notice thereof to the respondent and to the Justices making the order.

This notice satisfied the conditions of the Bastardy Acts, 7 & 8 Vict. c. 101. s. 4, and 8 & 9 Vict. c. 10. s. 3, but not the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, in that it did not state the grounds of appeal, and was not served on the clerk to the Justices.

Redman shewed cause on behalf of the respondent.—It is not enough to comply with the terms of the Bastardy Acts. The 31st section of the Summary Jurisdiction Act, 1879, lays down the conditions of appealing "where any person is authorised by this Act or any future Act to appeal," and by section 54, "this Act shall apply to the levying of sums adjudged to be paid by an order in any matter of bastardy, or by an order which is enforceable as an order of affiliation," and particularly "to an appeal from an order in any matter of bastardy." By section 55, "there shall be repealed as from the commencement of this Act," besides the Acts in the schedule, "so much of any other Act as is inconsistent with this Act."

[BOWEN, J.—Section 32 says, "Where a person is authorised by any past Act to appeal from the conviction or order of a Court of summary jurisdiction to a Court of general or quarter sessions, he may appeal to such Court subject to the conditions and regulations contained in this Act." It says "may" not "must."]

He is not bound to appeal at all. He may appeal, if he will; but if he appeals he must comply with the terms of that Act.

[BOWEN, J.—The section continues, "Provided that where any such appeal is in accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act."]

The Bastardy Act is not "unrepealed" so far as the appeal sections are concerned. It is repealed by sections 54 and 55 of the Summary Jurisdiction Act.

Counsel, in support of the rule, was not called upon.

FIELD, J.—I am of opinion that this rule must be made absolute. I do not think that it was intended to deprive the appellant of any previously existing advantage. The conditions of the form of appeal followed in this case are less onerous than those which it is contended ought to have been followed. The Legislature meant to say, "We will not alter the existing rights of appeal; the appellant may apply under the former Acts or this Act, whichever he likes; he need not comply with the conditions of this Act." I think this is the right construction of sections 31 and 32; but Mr. Redman says that section 54 has isolated orders in bastardy, and keeps them under section 31. I do not think that was intended. Section 54 was inserted on account of the peculiarity of orders in bastardy. They are half convictions, half orders, and there was a doubt whether they were included in the words "conviction or order," so that all the provisions of the Act are made to apply to them. That was the object of that section, and not to make bastardy appeals differ from all others, and deprive them of existing procedure.

BOWEN, J.—I am of the same opinion (1).

Rule absolute.

Solicitors—Child & Son, agents for M. Jones, Welshpool, for prosecutor; Jones, Blaxland & Son, agents for Woosnam, Newtown, Montgomeryshire, for respondent.

(1) On the same day, before the same Judges, the same decision was given in the case of *The Queen v. The Justices of the West Riding*. *Gilbert Metcalfe* shewed cause for the respondent. *G. S. Bower*, for the prosecutor, was not called upon. Solicitors—G. B. Wheeler, agent for Robinson & Robinson, Keighley, for prosecutor; E. H. Bedford, agent for Cooke, Keighley, for respondent.

1882.
March 23,
24;
April 4.

THE SHEFFIELD WATERWORKS
COMPANY (appellants) v.
CARTER (respondent).
BROOKS (appellant) v. THE
SHEFFIELD WATERWORKS
COMPANY (respondents).
THE SHEFFIELD WATERWORKS
COMPANY (appellants) v.
BROOKS (respondent).

Water—Waterworks Clauses Acts, 1847 (10 & 11 Vict. c. 17), s. 4—Supply of Water to Houses—Water by Measurement—Liability of Consumer to supply Meter—Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), ss. 14 and 16—Refusal to supply Water—Non-payment of Rate in Advance.

The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 14, provides that where undertakers are authorised by this special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, for such remuneration in money as may be agreed upon between them and the consumer.

A special Act of a water company incorporated the Waterworks Clauses Act, 1863, and compelled a water company (unless prevented by clauses beyond their control) to supply water at certain rates per thousand gallons for, inter alia, baths, without imposing any obligation on the part of the consumer to provide a meter:—

Held, that no such obligation could be implied from section 14 of the Waterworks Clauses Act, 1863, and that the company were not entitled to require, as a condition precedent to the supply, that the consumer should put up, at his own expense or hire from the company, a meter for the purpose of measuring the water supplied.

By the Waterworks Clauses Act, 1847, section 43, a penalty is imposed on undertakers who neglect or refuse to furnish an occupier entitled under that or any special Act with a supply of water during any part of the time for which the rates for such supply have been paid or tendered.

B. supplied a bath in his house with water by means of a pipe communicating with the cistern into which water was conveyed from the company's mains for pur-

poses of ordinary family use, not including baths. B. had paid in advance, for the quarter ending the 29th of September, the sum properly payable for the supply of water for ordinary family use, but had made no tender or payment in respect of the water supply to the bath during the same period. The company insisted upon measurement of the quantity of water supplied to the bath by meter to be provided by B., or let to him on hire by the company; and upon B.'s refusal either to comply with the company's demand, or to disconnect the pipe which supplied the bath from the cistern, the company proceeded, on the 20th of September, to cut off the communication pipe between their main and B.'s cistern, and so stopped the supply of water to B.'s house. On the 24th of September, B. severed the inlet pipe from the cistern which communicated with the bath (allowing, however, the outlet pipe of his bath to remain), but gave no notice to the company that he had done so until the 29th of September, on which day he also paid in advance the proper amount for the supply of water for domestic purposes for the quarter ending the 24th of December. The company, however, refused to supply water, on the ground that B. had not cut off the outlet pipe from his bath, until the 4th of November, when they restored the communication under protest:—

Held, that the company were not liable to a penalty under section 43 of the Act of 1847, for refusing to supply B. with water between the 20th and 29th of September, inasmuch as that section contemplates a payment or tender in advance for the supply required; and that, inasmuch as B. had neither paid nor tendered anything in respect of the supply of water required for the bath, there was not a neglect or refusal within the meaning of that section:—
Held, further, that the neglect and refusal must be with knowledge of the circumstances entitling an occupier to a supply, and that accordingly, as to the period between the 24th of September and the 29th of September, the company not knowing that the bath had been disconnected were in the same position as before. But, held, that the company were liable to a penalty

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for the period between the 29th of September and the 4th of November, inasmuch as they were not justified in refusing to supply B. with water between those dates, and were not entitled to insist upon the outlet pipe of the bath being removed.

CASES stated by the stipendiary magistrate for the borough of Sheffield, under 20 & 21 Vict. c. 43.

CARTER'S CASE.

A complaint was laid, under section 43 of the Waterworks Clauses Act, 1847 (10 Vict. c. 17), by the respondent against the appellants, for that the respondent, being a person entitled under section 35 of that Act (which was incorporated with the appellants' special Act) to a supply of water for domestic purposes and for the use of his family, at 86 Clarkeham Road, Sheffield, tendered to the company the amount by law required for such supply up to the 29th of September, 1881; but that, notwithstanding such tender, the company, for the space of thirty-four days, to wit, from the 26th of August to the 29th of September, 1881, neglected and refused to furnish such supply.

As a fact, the company did not supply the house with water during the thirty-four days complained of; but this arose only through the dispute hereinafter mentioned.

In the supply of water to the house there was involved a supply of water for a bath, within the 81st section of the Sheffield Waterworks (Special) Act, 1853, and the dispute was caused by the directions in this section as to furnishing such supply at and after certain rates, according to the thousands of gallons supplied.

The respondent had been using a method by which he considered he was ascertaining by actual measurement the quantity of water which was being supplied to his bath. He informed the company of what he was doing, and arrived at the conclusion that during the last twelve months the consumption of water in his bath had not been quite two thousand gallons. He considered that on the average the bath had been used as frequently during that period as in any previous year, but not more frequently; but he was willing to

give the company the benefit of an extra thousand gallons per annum, to cover any possible difference in quantity, and so put the twelve months' consumption at three thousand gallons instead of two thousand gallons. Under this view a sum of 17s. 3d. was the proper amount due in respect of the supply of water to his bath up to the 24th of June, 1881, which sum he accordingly tendered to the company. He further tendered, on the 27th of September, the sum of sixpence for water used in his bath between the 24th of June and the 26th of August.

The method which the respondent adopted was as follows: he had a water-line painted round the sides of the bath, at such a height from the bottom as gave a measure of a shade under thirty-one gallons of water in the bath when filled to the bottom of the line, and a shade under thirty-two gallons when filled to the top of it. He further had a calendar for the current year hung up in the bathroom, and gave orders that when the bath was used it should never be filled higher than the water-line, and that the calendar should be marked at the day, so as to shew that the bath had been used on it. By the marks on the calendar he arrived at his conclusion as to the number of times his bath was used, and then, by allowing thirty-two gallons for each time, he further came to his conclusion as to the quantity of water which had actually been used.

The water company, as a fact, claimed 6l. 15s. 5d. for the water supplied to the bath up to the 24th of June, 1881; but this amount was merely a calculation made on a scale (graduated according to the rent of the house, and based upon an estimate of the average quantity required) which the company call their estimate scale, and which some consumers have been willing to agree to, in place of a rate by the thousands of gallons supplied, but which the respondent had not agreed to, and which only affects those who agree. The company also claimed a further sum, reckoned on the estimate scale for the time after the 24th of June.

The view taken by the company was that they were willing to supply the water for the bath upon the terms of their above-

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named printed estimate scale, and that otherwise the supply of water for the bath must be taken by a meter, because the directors were advised that the company are under their special Acts and the Acts incorporated therewith entitled to require, and the company do require, a meter to be used for ascertaining the quantity of water supplied for the purpose of the bath. Beyond this the company's view was that the meter may be either provided and fixed by the consumer, subject to the approval of the company, or the company were willing to provide a suitable meter, and let it to the consumer for hire.

The respondent contended that there is nothing in the statutes which enabled the company to require him to fix a meter to his bath at his own cost.

The magistrate convicted the company for not giving the defendant a supply of water between the 26th of August and the 29th of September in a penalty.

The question for the opinion of the Court was, whether the appellants were entitled to insist on meters, and meters only, being used by their consumers to measure the supply of water to their baths.

If the appellants were not so entitled, the conviction was to stand, but if they were, it was to be quashed.

BROOKS' CASE.

In this case there were two complaints by Brooks against the company, for neglecting to supply water for domestic purposes and the use of his family at 4 Machon Road, in the borough of Sheffield, between the 20th and 29th of September, and the 29th of September and the 4th of November, 1881.

The complainant Brooks became the occupier of a house situate in the borough of Sheffield, within the limits of the company's Acts, on the 23rd of February, 1881. The owner of such house had previously laid a communication pipe between the house and the main pipes of the company, in accordance with the requirements of the company, and the said house was, on the 23rd of February, 1881, supplied with water by means of such pipe, and the water passed and was delivered, by means

of this communication pipe, into a cistern in the house. In the house there was a water-closet and also a fixed bath, both of which were supplied with water from the cistern, and from it also came the supply of water for purposes which were admittedly uses of the family, within the 79th section of the Sheffield Waterworks Company's Special Act of 1853. Under the provisions of this Act the company were entitled, in respect of the water supplied for the family use of the complainant and the water-closet purposes, to the payment of 11s. 3d. per quarter. There were also provisions in the Act providing for the payment of water supplied for both purposes, according to quantity, and at certain rates there specified.

As an alternative for actual measurement by meter, the company offered to persons requiring a supply of water for baths a "composition rate or estimate scale" of charges for such baths, based upon the company's assumption of the probable consumption, but varying in proportion to the rental of the houses to which such baths were fixed. The consumers had no voice in fixing this scale. According to this scale, the charge for a bath in Brooks' house would be 1l. per annum, but Brooks had never agreed to pay this sum.

The company insisted on the complainant either paying for the water supplied to his bath according to the "composition rate or estimate scale" of charges, or by advertisement of quantity, by means of a meter, to be provided, fixed and maintained in repair at his own expense, or to be let to him on hire by the company.

The complainant declined to accept either of these alternatives, but on the 15th of September, 1881, he offered to pay the company the sum of 5s. per annum for the water to be supplied to his bath; which sum was, in his opinion (having regard to the price fixed by the company's Acts), a reasonable charge. On the same day he paid to the company the sum of 11s. 3d., which was the proper sum to be paid to the company for the supply of water for the ordinary use of himself and his family in his dwelling-house and the water-closet, for the quarter ending the 29th of September, 1881; but he made no payment or tender in respect of any water to be

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supplied to or used in the bath during such quarter.

On the 16th of September the company gave notice in writing to Brooks of their intention to cut off the pipes by which water was supplied by the company to him, unless he was prepared to accept one of the alternatives which had been offered to him with respect to the payment for water supplied to his bath, or to have the pipes supplying his bath disconnected from the company's service.

On the 20th of September, 1881, no answer having been received to the above communication, the company cut off the communication pipe between their main and Brooks' cistern, and so stopped all water from flowing into the house. It did not appear that there were any other means by which the company could have prevented the water supplied by them to Brooks' house from flowing into the pipes connected with his bath.

On the 24th of September Brooks severed the inlet pipe from the cistern to the bath, but did not close or stop up in any way the waste or outlet pipe at the bottom of the bath, and the bath could still be used if water were introduced into it otherwise than by means of the inlet pipe. Brooks did not give notice to the company that he had so severed or closed up the inlet pipe to his bath until the 29th of September, nor did the company know that he had done so.

On the 29th of September Brooks gave the company notice of what he had done on the 24th, and he also paid them 11s. 3d. in advance, for the supply of water for the use of himself and his family, and for the water-closet, for the quarter ending the 24th of December, 1881 (which was the proper sum, exclusive of the price of water required for the bath). At the same time he gave notice in writing to the company that he required a supply of water for "domestic purposes" for his house. He did not re-connect or offer to re-connect, or to pay for the re-connection of the communication pipe which had been cut by the company on the 20th of September. On the said 29th of September Brooks was requested by the company to close up the waste or outlet pipe of the bath, but declined to do so.

On the 3rd of October Brooks tendered to the company 2s. 1d., in payment for the water supplied to his bath for thirty-seven weeks, between the time he entered the house in January and the end of September, which sum he stated to represent the price of, at least, double the amount of water actually used during that time.

On the 14th of October Brooks was again requested to stop or close the said waste or outlet pipe, and again refused to do so. The company then tendered back the 11s. 3d. paid on the 29th of September, but Brooks refused to receive it.

On the 4th of November the company restored Brooks' water supply, stating that they did so under protest, and without prejudice to their legal rights.

The magistrate dismissed the first complaint, as to the period between the 20th and 29th of September, on the ground that Brooks was not entitled to complain under section 43 of the Waterworks Clauses Act, 1847, about the supply of water, of which the bath water formed, up till the 24th of September, a mixed-up part, inasmuch as no payment had been made or tendered in respect of part of the supply, to wit, the bath water; and that as to the time between the 24th of September and the 29th of September the defendants were entitled to remain unaffected by the change, of which they had received no notice.

The magistrate convicted the company on the second complaint in a penalty, for the period between the 29th of September and the 4th of November, 1881, on the ground that the company were not entitled to cut off the communication pipe because the complainant refused to provide a meter, and consequently the complainant was not bound to restore the communication pipe before he could claim a supply for the use of his family.

The questions for the opinion of the Court were:—

1. Were the company justified in refusing to supply Brooks with water for his domestic use between the 20th and 29th days of September, 1881, and also on the 20th of September in cutting the pipe by or through which the water was supplied by them to him, or for his use, and in stopping the water from flowing into his premises?

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And was the magistrate right or wrong in disallowing his first complaint?

2. Were the company justified in refusing to supply Brooks with water for his domestic use on and after the 29th of September, 1881?

A. Wills, Q.C. (John Edward Barker and Price with him), argued on behalf of the company.

Cyril Dodd was for Carter and Brooks. [The nature of the arguments, a considerable portion of which turned on certain provisions contained in the special Acts of the company, sufficiently appears in the judgment of the Court.]

Cur. adv. vult.

The judgment of the Court (1) was (on April 4) delivered by

CAVE, J.—In the first of these cases we are asked whether the company are entitled to insist on meters, and meters only, being used by their customers to measure the supply of water to their baths. For the company it was contended, first, that they are not bound to supply water for baths at all; and secondly, that if they are so bound they are entitled to insist on meters being used by their customers. By the 11 Geo. 4. c. lv. s. 93, it was enacted that "the company should be obliged in the manner thereinbefore directed to furnish such a sufficient supply of water, so far as their means would allow, to every inhabitant for the use of his or her family at certain rates; and that in the case of persons requiring a supply of water for (among other purposes) baths, such supply should be furnished by the company in such cases at such rates as should be settled by and between the committee of management of the company and such persons respectively."

By the 8 & 9 Vict. c. clxxv. s. 83, it was enacted that in the case of persons requiring a supply of water for (amongst other purposes) baths or closets, such supply should be furnished by the company at a rate not exceeding one penny for every one hundred gallons so supplied as aforesaid. By section 84 it was enacted that the company should not charge more in any one

year than the rates thereafter specified in respect of water-closets in or belonging to any private dwelling-house; "provided always that the company shall not be compelled to supply any water-closet not constructed in manner approved of by the company."

Under the first Act, the obligation to furnish a sufficient supply for ordinary use, which did not include baths, was limited by their means, but subject to that limitation, the obligation to supply would appear to have been compulsory. The obligation, however, to supply water for baths or closets was in fact left to the discretion of the company, by the provision that it was to be supplied at a rate to be settled by the company and the consumer. This last proviso, however, was altered by the Act of 1845, which fixed the rate; and the proviso in section 84 seems to lead to the inference that, subject to the limitation as to means which was repeated in section 81 of the Act of 1845, the supply of water under section 83, at the rate therein specified, was compulsory, and not discretionary.

The preceding Acts were, however, repealed by an Act passed in 1853, which is still in force. By section 79 of that Act, it was enacted that, "the company shall, and they are hereby required to, furnish a sufficient supply of water to every inhabitant for the use of his or her family," at certain rates calculated on the rent of the house. By section 81, "In cases of schools, manufactories, dyers, printers, bleachers, brewers, innkeepers, livery stable keepers, ale-house keepers and other persons requiring a supply of water for other purposes than his or her own family's consumption, or persons requiring a supply of water for baths, ponds, or pools, or closets, or for washing carriages, or for cows or horses, or for the purposes of any trade or business whatsoever, such supply shall be furnished by the said company in such cases, at and after the following rates per thousand gallons."

Now looking at the purposes for which the water to be supplied under this section is required, and looking at the construction which must be put on the similar words of section 83 of the Act

(1) *Mathew, J.*; and *Cave, J.*

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of 1845, there seems every reason for putting upon the language of this section its natural construction, and for holding that the words "such supply shall be furnished by the company," impose upon the company the obligation, and do not merely confer a discretionary power of supplying water for those purposes. To hold that the words conferred a discretionary power, would enable the company to supply certain manufactories and refuse to supply others, and to decide arbitrarily what houses should and what should not have a supply of water for their water-closets.

We can find no provision in the Act which favours the notion that the Legislature intended to repose a discretion of this kind in the company. Mr. Wills referred to the Waterworks Clauses Act of 1847 (10 & 11 Vict. c. 17), as shewing that the Legislature contemplated a compulsory supply for domestic purposes; but as to this it is sufficient to point out that section 43 imposes a penalty on the company for neglecting or refusing to furnish any owner or occupier entitled under that or the special Act to receive a supply of water, which shews conclusively that the Legislature contemplated the possibility of a supply being made compulsory by the special Act, in addition to the supply for domestic purposes made compulsory by the general Act.

It was next contended that section 74 of the general Act of 1847, which is the only section giving the company power to cut off the water if the rate is not paid, cannot apply to the sums payable for water supplied for both purposes, and that therefore if the supply of water for baths is compulsory there is no power to cut it off if the tenant refuses to pay. Section 74 is in these terms: "If any person supplied with water by the undertakers, or liable as herein or in the special Act provided, neglect to pay the water-rate at any of the said times of payment thereof, the undertaker may stop the water," &c. It was argued that the expression, "said times of payment," must refer to the preceding sections 68 and 70, of which the former enacts that the rates shall be payable according to the annual value of the tenement supplied, and the latter requires that the rates shall be paid in advance by equal

quarterly payments, and that it is inapplicable to payments by measure, which cannot be made in advance. But the interpretation clause (section 3) provides that the expression "water-rate" shall include any rent, reward or payment to be made to the undertakers for a supply of water, and section 74 expressly includes persons liable, as in the special Act provided, to pay the water-rate as persons whose water may be cut off.

Lastly, it was asked, assuming the supply to be compulsory, what would happen if, at any time, the company had not enough water to supply all those who under section 81 of the Act of 1853 might require a supply. The general Act of 1863, by section 13, exempts the undertaker from penalties or damages for not supplying water under any agreement to supply it for other than domestic purposes, if the event of such supply arises from frost, unusual drought or other unavoidable cause or accident. But this section is expressly limited to the case of water supplied under an agreement, and does not apply to water supplied compulsorily; and it was contended that it was unreasonable to hold the supply for baths to be compulsory, because, in that case, the company would be liable for the non-supply of water for bath purposes where the non-supply had arisen from such causes as those above-mentioned. But the answer is that the company would not be liable under those circumstances. "When a party by his own contract creates a duty or charge upon himself, he is bound to make it good if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract; but where the law creates a duty or charge, and the party is disabled to perform it without any default in him, and hath no remedy over, there the law will excuse him"—*Paradine v. Jane* (2). Moreover, section 43 of the general Act, 1847, which fixes a penalty for the neglect or refusal to supply water, has an express exception in the case of frost, unusual drought or other unavoidable cause or accident, or during necessary repairs.

Then if the supply is compulsory, is

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there anything in the company's Act or in the general Acts to shew that the company are entitled to require as a condition precedent to the supply that the consumer shall put up at his own expense or hire from the company a meter, for the purpose of measuring the water so supplied?

For the purpose of shewing that there is, Mr. Wills referred us to section 97 of the Act of 1845, which, after reciting that the houses of the poor are, in many cases, not supplied with water on account of the inability of the owners or occupiers to lay down the communication pipes and other apparatus, requires the company, under certain conditions, to lay down such pipes and apparatus. It was suggested that the apparatus here referred to includes a meter, but it seems unlikely that in the class of houses referred to, water was used in 1845 for baths, and it seems more natural to suppose that the word "apparatus" refers to cisterns to hold the supply, or to taps or cocks to regulate its admission and distribution. Mr. Wills also referred to the company's Act of 1860, and the general Act of 1863 (26 & 27 Vict. c. 93). Section 12 of the former Act provides that if the company use or require to be used any meter for ascertaining the quantity of water to be supplied to any person, for any purpose under the Act of 1853 or that Act, the council may appoint an inspector of meters; and section 14 of the latter Act empowers the undertakers, when they are authorised by the special Act to supply water by measure, to let meters for hire to any consumer, for such remuneration in money as may be agreed upon between them and the consumer; but we think that these sections do not warrant us in inferring what we nowhere find expressed, namely, an obligation on the part of the consumer to put up a meter at his own expense, or hire one from the company as a condition precedent to his right to require a supply of water for a bath or water-closet.

These considerations enable us to answer the question put to us in *Carter's Case*, which is, whether the company are entitled to insist on meters, and meters only, being used by their customers to measure the supply of water to their baths; and we are of opinion that this question must be

answered in the negative, and consequently that the conviction must stand, and the appeal be dismissed with costs.

Brooks' Case needs some further consideration. On the 15th of September, 1881, he required a supply of water, both for the ordinary use of himself and his family, and for a water-closet and a bath, and paid the company 11s. 3d., which was the proper sum to be paid for the supply of water for ordinary use and for the water-closet for the quarter ending the 29th of September, 1881, but he made no payment or tender in respect of the water to be supplied to or used in the bath during such quarter, and thereupon the company on the 20th of September cut off the water and refused to supply any water for any purpose whatever.

Mr. Brooks, on the 24th of September, severed the connection between his cistern and his bath, allowing however the outlet pipe of his bath to remain, but gave the company no notice of what he had done until the 29th of September, when he paid the proper sum for the supply of water for the ordinary use of himself and family, and for the water-closet down to the 25th of December, 1881.

The company, however, still refused to supply water, apparently on the ground that he had not also cut off the outlet of his bath, until the 4th of November, when they restored the communication under protest.

Some difficulty arises from the fact that section 43 of the Act of 1847, which imposes the penalty on any neglect or refusal to supply water, appears to contemplate payment by a rate on the value of the tenement only, and not payment by measurement. But we are of opinion that the complainant must bring himself within the words of the section, which appears to contemplate a payment or tender in advance for the supply required, and that as he had neither paid nor tendered anything in respect of a part of the supply he required, namely, that for the bath, there was not a neglect or refusal within the meaning of that section.

We are further of opinion that, having on the 15th of September required a water supply for the bath, Mr. Brooks must be taken to have continued to require such

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supply until the 29th of September, when he gave notice to the company that he had disconnected the cistern from the bath, and required a supply only for his ordinary use and for the water closet; for we think that the neglect or refusal referred to in the 43rd section, and which is to be visited with a penalty, must be a neglect or refusal with knowledge of the circumstances entitling the owner or occupier to a supply. After the notice of the 29th of September it appears to us that the company were in default in refusing to supply water for ordinary use and for the water-closet, and that they were not entitled to insist upon the outlet pipe of the bath being removed. Although the company cannot be convicted for the refusal to supply between the 20th and 29th of September, because the Act only authorises the imposition of a penalty where the water-rate or remuneration for the supply required has been paid or tendered in advance, yet they were not in our opinion justified in cutting off the supply, and consequently do not fall within the principle laid down in *The Sheffield Waterworks Company v. Wilkinson* (3), and were not entitled to require Mr. Brooks to renew the communication.

The result, therefore, is that in Brooks' case both appeals must be dismissed, and as each party has succeeded in part there must be no costs.

Judgment accordingly.

Solicitors—Pitman & Son, agents for Chambers & Son, Sheffield, for Carter and Brooks; Patison, Wigg & Co., agents for Broomhead, Wightman & Moore, Sheffield, for the Sheffield Waterworks Company.

1882. { THE QUEEN v. DYOTT AND
May 19, 22. { OTHERS, JUSTICES OF STAFFORDSHIRE, AND LEVETT.

Poor Rate—Notice of Rate—Extra-parochial Place—Duty of Overseers—17 Geo. 2. c. 3. s. 1—7 Will. 4. and 1 Vict. c. 45. s. 2—Place where no Church or Chapel—Publication of Rate.

A rate for the relief of the poor was

(3) 48 Law J. Rep. M.C. 41; Law Rep. 4 C.P. D. 410.

made by the overseers of an extra-parochial place containing neither church nor chapel, but constituted a parish for poor-law purposes by virtue of 20 Vict. c. 19. The Act 7 Will. 4. and 1 Vict. c. 45. s. 2, substitutes a written notice to be affixed on the church door for the public notice of every rate required by 17 Geo. 2. c. 3 to be given in church. The earlier Act says that no rate shall be valid unless such notice shall have been given.

No notice or publication of this rate was given or made within the parish:—

Held, that the rate was bad.

This was a rule, calling upon certain Justices of Staffordshire and Mr. Ralph Levett, to shew cause why the Justices should not issue a distress warrant against the goods of Levett, to enforce the payment by him of a rate for the relief of the poor, made for the extra-parochial district of Hopwas Hays, in Staffordshire. Mr. Levett was rated as the owner of a wood in the district, and it appeared that the only building in the district was a keeper's lodge. There was no church or chapel, but the district was under 20 Vict. c. 19 constituted a parish for the purposes of the relief of the poor, with overseers, by whom the rate in question had been made. No publication of the rate was made within the district, and upon that ground Mr. Levett refused to pay when the demand was made upon him. The Justices to whom the overseers applied, dismissed the summons for the issue of a distress warrant.

A. C. Glen, for the respondent Levett.

—The rate was invalid because there had been no previous publication, and therefore it cannot be enforced. By 17 Geo. 2. c. 3 (1) the publication of rates was for the first time required. The preamble

(1) By 17 Geo. 2. c. 3, it is enacted "that the churchwardens and overseers, or other persons authorised to take care of the poor in every parish, township or place, shall give, or cause to be given, public notice in the church of every rate for the relief of the poor allowed by the Justices of the peace the next Sunday after the same shall have been so allowed; and that no rate shall be esteemed or reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given."

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to the Act runs thus, "Whereas great inconveniences do often arise in cities, parishes, &c., by reason of the unlimited power of the churchwardens and overseers of the poor, who frequently, on frivolous pretences and for private ends, make unjust and illegal rates in a secret and clandestine manner, contrary to the true intent and meaning of 43 Eliz., &c., for remedy whereof, and preventing the like abuses for the future,"—and section 1 enacts that public notice of rates is to be given in the church the next Sunday after it has been allowed by the Justices. By 7 Will. 4 and 1 Vict. c. 45. ss. 1 and 2 (2), publication of the notice in the church is stopped, and instead the notice is to be affixed on or near to the doors of all the churches and chapels within such parish or place.

The publication under the older statute has been held to be a condition precedent—*Sibbald v. Roderick* (3)—and it seems that the notice must be published in the place to be affected by it—*The Queen v. Marriott* (4). The district for which this rate was made being extra-parochial, and there being no parish church, the notice should have been posted up on some other building or conspicuous place within the district—*Finney v. Godfrey* (5); where in construing the 7 Will. 4 and 1 Vict. c. 45. s. 2 (2), James, V.C., considered that posting the order upon the parish church was conditional upon there being a parish church, and held it to be sufficient if the notice were posted up in some public place in the district. They referred also to *Mayer v. Harding* (6).

(2) By 7 Will. 4 and 1 Vict. c. 45. s. 2, "All proclamations or notices which, under or by virtue of any law or statute, or by custom or otherwise, have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing, and copies thereof shall be affixed on or near to the doors of all the churches and chapels within such parish or place; and such notices, when so affixed, shall be in lieu of and as a substitution for the several proclamations and notices heretofore given as aforesaid, and shall be good, valid and effectual to all intents and purposes whatsoever."

(3) 11 Ad. & E. 38; 9 Law J. Rep. M.C. 76.

(4) 12 Ad. & E. 779.

(5) 39 Law J. Rep. Chanc. 162; Law Rep. 9 Eq. 356.

(6) 9 B. & S. 27, note a; Law Rep. 3 Q.B. 410.

W. G. Harrison, Q.C. (*Masterman* with him), for the appellants.—Previous to 17 Geo. 2 the publication of rates was not required. It was assumed that the district for which the rate was made possessed a church, and the Act was not intended to apply to extra-parochial districts, which at that time were not rateable—20 Vict. c. 19. The 7 Will. 4 and 1 Vict. c. 45, has not repealed the earlier statute, but has merely altered the mode of publication, so that these enactments are not intended to apply to extra-parochial districts where there is no church or chapel. *Finney v. Godfrey* (5) is an authority that the Act does not apply where there is no church or chapel. The overseers are, by 20 Vict. c. 19, required to levy rates on these extra-parochial places, and the Court cannot import an impossible condition into the statute. The effect of so doing will be that no rate can be made for an extra-parochial place which has no church or chapel.

GROVE, J.—I think that we cannot get out of the express prohibitory words of the statute. We should be making law, not carrying it out, were we to disregard them. The Court may sometimes apply the doctrine of *cy-pres*, if by so doing the nearest possible object to that specified can be attained, and there is otherwise a complete failure.

But here the statute has positively prohibitory words, and gives a reason for saying that no rate shall be esteemed valid unless notice has been given—namely, to prevent unjust rates being made in a secret and clandestine manner.

That statute was passed before extra-parochial districts were subject to rates, and there is no provision touching this question in the statute by which afterwards extra-parochial places were made liable to rates. We have not here to decide whether this rate was published in a prominent place, for nothing at all was done in the way of publication, and it is so found by the Justices. We have to decide whether the prohibition can be done away with because the subsequent statute has altered the mode of publishing from announcement in the church to the affixing of written notice on the church

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doors. Neither Act says anything which can repeal the preceding statute, so we must give effect to it. The Legislature did not notice the prohibitory enactment, and as we cannot alter it, it must be remedied by statute, if at all. The only case cited which has any application is *Finney v. Godfrey* (5), and there there were no prohibitory words. The statute said that the order should be published in the church; but there was no provision in the negative enacting that no order should be valid unless so published. Nor was there argument on both sides. I therefore do not think the case applies, and this rule must be discharged.

NORTH, J.—I agree. The Act 17 Geo. 2 was passed to meet the difficulty that overseers made secret and unjust rates, and, as stated in the preamble, “for remedy whereof, and preventing the like abuses for the future,” public notice is ordered to be given of every rate made and allowed.

As soon as that Act became law, public notice in the church was essential to the validity of a rate. Then the Act which substitutes the church door for the inside as the place of publication, and did no more, cannot affect the question, and so it must stand, as upon the first Act. The only other Act is that of 20 Vict. c. 19, which says in section 6, “The overseers appointed under the authority of this Act . . . shall be subject to all the obligations, responsibilities, &c. which overseers are now or may hereafter be liable to.”

One of the obligations was that of observing the provisions of 17 Geo. 2 as to not making a secret rate. Now, in the Act 20 Vict. c. 19, there is one section—section 9—which seems favourable to the validity of the rate, because it says where any extra-parochial place has within it a church or chapel of the Church of England, the Bishop may authorise the publication of banns there. That contemplates an extra-parochial place not having a church or chapel. Are we then to treat this as a case where notice was deliberately dispensed with, or was it overlooked? I think that it was not deliberately dispensed with, for, if so, something would have been said in the Act. Being therefore a *casus*

omissus, we cannot draw any inference contrary to the express provisions of 17 Geo. 2. I will only add a word as to *Finney v. Godfrey* (5). In that case there were no prohibitory words in the statute; but it should be observed also that the application was made *ex parte*, out of the ordinary course, and was for directions: the Vice-Chancellor expressed an opinion only, and it was but a judgment *nisi*, which would require argument; and as the order could only have had the effect against the absent party of an order *nisi*, he could not be prejudiced. I think, therefore, that that case does not apply to the present, and that the rule must be discharged.

Rule discharged.

[But see 45 & 46 Vict. c. 20. s. 4, passed to meet this case.]

Solicitors—Maples & Co., agents for Shaw, Tamworth, for the overseers; Pitman & Son, agents for T. Argyle & Son, Tamworth, for Levett.

1882. } SMITH AND OTHERS v. THE
June 24, 26. } ASSESSMENT COMMITTEE FOR
LAMBETH AND OTHERS.

Poor—Rating—Occupation—Bookstalls in a Railway Station.

Newsagents, by agreement with a railway company under seal, obtained the exclusive right to sell newspapers, &c., at a railway station in consideration of yearly payments, recoverable as in the case of rent in arrear, with power to erect bookstalls, and with reasonable access to the station; the company reserving the power to choose and move the places for the bookstalls, to prevent the sale of objectionable prints, and to control the newsagents' servants through the station-master. The newsagents erected bookstalls, which were fixed to the structure of the station, and of which they retained the keys:—Held, that they were not rateable to the poor-rate.

CASE stated by the order of a Judge and by consent, under 12 & 13 Vict. c. 45, s. 11, in four appeals brought to the Surrey quarter sessions against a poor-rate

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made and allowed on the 20th of March, 1880.

The appellants are booksellers, librarians, stationers, and news and advertisement agents, carrying on business as W. H. Smith & Son, their principal place of business being in the Strand.

The respondents are the assessment committee for the parish of Lambeth and the churchwardens and overseers of the parish in which the Waterloo Station of the London and South Western Railway Company is situated.

On the 18th of February, 1880, the appellants received notice that certain bookstalls in the Waterloo Station were included in the provisional list for assessment. The appellants gave notice of objection; but their objections were overruled, and the appellants were rated as occupiers of four properties, numbered 3,242, 3,243, 3,244 and 3,245 respectively, described in each case as "bookstalls." Nos. 3,242 and 3,243 were described as situated in "Waterloo Station, Platform"; No. 3,244 as situated "Waterloo Station, Old Suburban Line Platform," and No. 3,245 as situated "Waterloo Station, Platform New Line." The gross estimated rental and rateable value were given in due form in the rate-book.

The bookstalls in question were in the possession of and used by the appellants under an indenture, dated the 25th of April, 1872, made between the London and South Western Railway Company and the appellants, described as "tenants."

By this indenture the company, in consideration of yearly payments, granted to the tenants for seven years, and thereafter from year to year, the sole and exclusive licence to sell, lend and exhibit for sale and loan newspapers, books, periodicals, pamphlets, prints, stationery, travelling caps, wrappers and articles required for the convenience of passengers at all stations then existing and used, or to be made and used, belonging to the company, or over which it had exclusive control, and also to affix advertisements on the station walls subject to the regulations of the company, "it being distinctly understood that a reasonable proportionate space should be set apart at each station

for such several purposes." There was, further, reserved to the company "full and free liberty to close and discontinue wholly or partially any of the stations without making any compensation to the tenants," with "full liberty for the tenants, subject to the approval of the engineer of the company, to erect, place and continue on such part of the platforms of the several stations of the company as may be approved of by the general manager or engineer of the company, all necessary bookstands, cases, cupboards and drawers, or other convenient places for exhibiting, keeping and preserving their stock of papers, &c., and to remove or alter the position from time to time if necessary, and also full and free ingress and egress at all reasonable times for their tenants, their servants or agents, to and from the stations for the purposes of this present grant." Each person employed by the tenants was to obey all the lawful and reasonable orders of the station-masters, and to be liable in case of insobriety or misconduct to immediate removal from the station. The payments were to be recoverable "in addition to any other remedies by distress as in the case of rent in arrear." The tenants were not to sell or exhibit anything of an indecent or immoral or seditious character, and the company might remove any such books or advertisements. The tenants were to "abide by the regulations which may be from time to time made by the company touching or concerning the placing on the platforms of the said several stations any of the necessary bookstands, cases, cupboards and drawers," which were to be of design approved by the company's engineer. The company warranted "the quiet and peaceable enjoyment of the grant," which might be put an end to on non-payment of the rent or a month's notice, so that "the said term hereby granted shall cease and determine."

From the date of this indenture the appellants exercised their rights under it, partly by attendants who exhibited and sold newspapers, books, &c., carried in the hand or in baskets to passengers at the station or in the trains at the station, and partly by means of portable bookstalls,

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and in the spaces assigned. At the commencement of the agreement, and for some time afterwards, spaces for one movable stall on the Main Line platform, and for one movable stall on the line then called the Suburban Line, were assigned by the company to the appellants, and as the station was from time to time enlarged and the business and traffic increased, other spaces were assigned. From time to time, at the request of the company, the appellants closed their stalls, and suspended the exercise of their rights and privileges.

The bookstall in the rate numbered 3,242, occupied a space abutting on the Main Line platform of the station, and such space was 30 feet 9 inches wide in the front, and 20 feet 6 inches wide at the back, by 8 feet deep. The bookstall had walls and a ceiling. The walls and ceiling formed part of the company's main building, and the stall is, and was before and at the time of the making of the rate, constructed as follows: The main wall of the booking and other principal offices of the company is a brick wall. Two brick piers which were part of and supported the wall were cut away for the purpose of increasing the space for the bookstall, which formerly was some feet in advance of its present position on the platform. In the place of the removed brick piers iron columns have been substituted, and these iron columns pass through the counter to and rest upon the lower part of the brick wall by which the counter is supported. Into the space or opening formed by the cutting away of the brick piers and the spaces between, and separated by the said piers, a shop front has been built. The shop front and the counter are firmly fixed by spikes to wooden wedges driven securely into the joints of the brickwork, which, as before stated, forms the main wall of the company's offices. The bookstall or space is separated from the booking office by a boarded partition, the sides of which are partly glazed, and the floor is boarded and is nailed to joists which are carried by brickwork.

The bookstall in the rate numbered 3,243 is upon the Main Line platform. It is a lock-up wooden case, 8 feet long, 2 feet

8 inches deep, and 7 feet 6 inches high. It stands in a recess between two brick pilasters, and is not attached or secured to the platform, but stands by its own weight.

The bookstall in the rate numbered 3,244 is upon the Loop Line platform, and occupies a space 11 feet 8 inches wide in front, and 12 feet 6 inches wide at the back, by 17 feet or thereabouts in depth. It is situated between the company's cloak-room and general waiting-room, and its construction and condition are as follows: It is open in front to the platform. One of the three of its sides is a wooden partition, boarded on the outside, and plastered on the inside, and the other two sides are solid brick walls containing a brick fireplace and chimney and window belonging to it. It has a flat boarded roof or ceiling, with a skylight in the centre, and the roof or ceiling is firmly wedged and cemented into the brickwork of the walls. The front of the bookstall is secured to the walls and ceiling by spikes firmly driven in. The counter is inside the bookstall, and customers enter the bookstall for business purposes.

The bookstall in the rate numbered 3,245 occupies a space abutting on the platform of the New Station, situate between the porters' room and porters' w.c., and is formed by the main external wooden glazed wall of the station, and by wooden three-quarter partitions boarded on both sides. The bookstall is divided into two parts by a wooden partition: the back part forms a room, and has a boarded floor and a fireplace and chimney brick-built and carried up through the main roof of the station; the front part has an external shop front and counter, and extends 6 feet 2 inches beyond the last-mentioned partition on to the platform, and the shop front is firmly secured to the first-mentioned partitions by spikes. There is a door of communication between the two parts. The roof of both parts is flat and boarded with a rebated and beaded boarded ceiling.

The bookstalls were used exclusively by the appellants and their servants, and only for the purpose authorised by the indenture. The bookstalls were closed at night with shutters, and locked up, and the keys

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kept by the appellants' servants. Alterations at the instance of the company were from time to time made in the position of the bookstalls since the date of the agreement. No rights of ingress and egress to and from the station or of access to the bookstalls are exercised by the appellants or their agents or servants except under the provisions and for the purposes of the indenture.

In or about the year 1871 when the assessment of the London and South Western Railway Company to the poor-rate in respect of their station at Waterloo was under consideration, the assessment surveyor to the parish of Lambeth included in his estimate for such assessment an item of 1,000*l.* in respect of annual profit to the railway company arising from bookstalls and advertisement spaces. The railway company did not admit in their estimate such a source of profit, and appealed against the whole assessment, and upon the hearing of that appeal the assessment sessions, without deciding as to any particular items, fixed a lump sum as the rateable value of the station.

The questions for the opinion of the Court were, whether the appellants are liable to be rated in respect of the bookstalls, or any of them, and whether the rate is a good and valid rate.

McIntyre, Q.C. (D. Kingsford with him), for the appellants.—The railway company are rateable for the whole station, and the appellants are not rateable for these bookstalls. They are not occupiers. There is no demise, as the tenants' rights are limited; there is only a licence. No particular space is demised. The occupation is the landlords' and not the so-called tenants'. He cited *The King v. Churchill* (1), *The London and North Western Railway Company v. Buckmaster* (2), *The Queen v. Morrish* (3) and *The Electric Telegraph Company v. The Overseers of Salford* (4). In *The Queen v. St. Pancras*

(5), Mellor, J., said that the occupation must be permanent.

[FIELD, J.—That is a doubtful expression.]

There must be a demise of the soil. All the stalls might stand by their own weight.

[FIELD, J.—Probably no struggle will be made for rating mere boxes.]

He cited *The Queen v. Smith* (6), *Allan v. The Overseers of Liverpool* (7), *Spear v. The Bodmin Union* (8), *Watkinson v. Milton-next-Gravesend* (9), *The Queen v. The Abney Park Cemetery* (10) and *The Queen v. St. Mary Abbott's* (11). *Cory v. Bristow* (12), in the House of Lords, is distinguishable.

Poland (Archibald with him), for the respondents.—The appellants are occupiers of the bookstalls. The agreement makes them tenants of the company. Although they may not have a right always to occupy any particular piece of ground, they do in fact occupy particular spots at the time of the rate, and are rateable for them. He cited *Roads v. The Overseers of Trumpington* (13), *Kittow v. Lisheard* (14), *The King v. Bilston* (15), *Guest v. The Overseers of East Dean* (16) and *The Queen v. The St. George's Union* (17).

(5) 46 Law J. Rep. M.C. 242; Law Rep. 2 Q.B. D. 581.

(6) 3 E. & E. 383; 30 Law J. Rep. M.C. 74.

(7) 43 Law J. Rep. M.C. 69; Law Rep. 9 Q.B. 180.

(8) 49 Law J. Rep. M.C. 69.

(9) 37 Law J. Rep. M.C. 73; Law Rep. 3 Q.B. 350.

(10) 42 Law J. Rep. M.C. 124; Law Rep. 8 Q.B. 515.

(11) 12 Ad. & E. 824; 10 Law J. Rep. M.C. 25.

(12) 46 Law J. Rep. M.C. 273; Law Rep. 2 App. Cas. 262.

(13) 40 Law J. Rep. M.C. 35; Law Rep. 6 Q.B. 56.

(14) 44 Law J. Rep. M.C. 23; Law Rep. 10 Q.B. 7.

(15) 5 B. & C. 851.

(16) 41 Law J. Rep. M.C. 129; Law Rep. 7 Q.B. 334.

(17) 41 Law J. Rep. M.C. 30; Law Rep. 7 Q.B. 90.

(1) 4 B. & C. 750.

(2) 44 Law J. Rep. M.C. 180; Law Rep. 10 Q.B. 444.

(3) 33 Law J. Rep. M.C. 245.

(4) 11 Exch. Rep. 181; 24 Law J. Rep. M.C. 146.

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FIELD, J.—I am of opinion that our answer to the question whether the appellants are rateable must be in the negative. The appellants are not liable to be rated for these bookstalls. With regard to the movable bookstalls I do not think the contention is arguable. The principles of occupation are now settled with tolerable clearness. Nothing else appearing, the London and South Western Railway Company would be held to occupy bookstalls as part of the station. The assessment committee has rated the company for these very bookstalls. There cannot be two rateable occupiers of the same land, unless the occupation is joint. It lies on the committee to make out that these stalls are rateable; the *onus* is upon them. The London and South Western Railway Company are the owners of the station, and until the space is assigned to the appellants, it is admitted that they are the occupiers; but they are said to have parted with their occupation. They retain all with which they have not parted. Their occupation involved doing what they liked with the land, licensing what they wished, prohibiting what they did not wish. The assessment committee must shew that all those elements of occupation have been parted with. They must shew that the company has parted with the control of the station, not merely that there is a covenant not to do certain things by the appellants. The terms on which the relation between the company and the appellants stands are in writing, and they are before us. Is it exclusive occupation by the appellants, or is it exclusive enjoyment by them, of that of which the company retain occupation? We must look at the whole scope of the agreement. The usual words of letting are well known. Occupation is an interest in land, and there are apt words for creating it. By using none of these words there may still be a demise, but from the beginning to the end of this document there is an avoidance of the appearance of a demise. The word "tenant" is the only word of the kind used, but we have the words "licence" and "liberty" and "putting an end to the licence." When the recovery of payments by the company is

dealt with, the conveyancer does not refer to distress for rent, but creates a right of distress "as in case of rent in arrear." These words are unnecessary if there is a demise; but still the effect may be a demise. The general rateability being in the company, is there any special rateability in any one else? The company keep in their own hands the whole control of ingress and egress in the station. They have, it is true, parted with the enjoyment of the space allotted to the appellants, who put up shutters and take away the key, but these are not an index of ownership. The key must be referred not to an intention to create an exclusive occupation, but to the protection of the miscellaneous articles in which the appellants deal. From beginning to end the space is under the control of the company, except as to the key. Any publication which may be considered by the company indecent may be removed. If the landlord retains control he has failed to part with occupation. In the case of lodgers and tenants where the landlord retains control, the tenant is a lodger. A series of authorities has been brought before us, particularly *Kittow v. Liskeard* (14), *Cory v. Bristow* (12) and *Roads v. The Overseers of Trumpington* (13). The result of these cases is that if a man is *de facto* in enjoyment of land to the exclusion of others, you take him to be the occupier. In *Kittow v. Liskeard* (14) and *Cory v. Bristow* (12) nothing more appeared. In the former case the landlord granted a licence to work minerals and also certain sheds. That was all; no control was reserved. In *Cory v. Bristow* (12) and *Roads v. The Overseers of Trumpington* (13) it was the same. There was a *de facto* occupation, and no control. These cases are not sufficient to establish Mr. Poland's proposition. The weight of authority is directly the other way. This is a case where a large owner is desirous of giving accommodation to people who are willing to carry on a business which they do not wish to carry on themselves. The North Western Railway Company cannot by law sell coal, or the South Western newspapers. *The Queen v. Morrish* (3) is equally strong with *The London and North Western Railway v. Buckmaster* (2). *Allan*

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v. The Overseers of Liverpool (7) is still stronger, because the shed was closed and the keys kept by Allan and the custom-house. This case is not covered by the authorities cited for the respondents, but principle and authority are both in favour of the appellants.

CAVE, J.—I am of the same opinion. The question is whether there was exclusive legal occupation, or whether there was only enjoyment. No test is furnished, but it is clear that it must reside in the control exercised by the company over the premises. The principal object of the arrangement is to give a licence to sell books and newspapers. The accessory is to place bookstalls. What the appellants obtain still remains a part of the station. Control and access are retained by the company. Have the appellants access at all times? No, only at reasonable times; the access will depend on circumstances; at small stations it will be different from what it is at large stations. As to persons, can they admit every one? No, only their servants in the business. Have they access for all purposes and at all times? No; it is only for books and the other things at the times of sale. Have the appellants any particular access? No, the company may change the access. May the appellants do what they like? Certainly not; there is not a general right of occupation restricted, but a restricted use. Even as to the books they may sell the use is restricted, and they must employ only persons obeying the orders of the station-master. As to access, enjoyment and persons employed, the company has control over all. The appellants are not tenants. There is no legal occupation. None of the cases cited for the respondents approaches this case, and as to the cases I agree with my learned brother.

Appeal allowed.

Solicitors—Harvey, Oliver & Capron, for appellants; G. W. Barnard, for respondents.

1882. { PARSONS (appellant) *v.* THE
June 16. { BIRMINGHAM DAIRY COMPANY
(respondents).

Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), ss. 6, 12, 13 and 14—Adulterated Article—Purchase by Private Individual—Notification to Seller—Analysis.

The provisions of section 14 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), apply equally to the case of a purchase by a private individual under section 12, and by the public officer mentioned in section 13 of the Act.

CASE stated by the Stipendiary Magistrate of Birmingham, under 20 & 21 Vict. c. 43.

The facts of the case were in substance as follows:—

The appellant, a farmer, living near Rugby, had been summoned by the respondents under the Sale of Food and Drugs Act, 1875, for selling to them a quantity of milk adulterated with water.

It appeared that the appellant had contracted to supply to the respondents milk, to be delivered daily at the New Street Station in Birmingham.

On the 26th of February a can of milk containing six gallons was brought by the appellant's servants to Clifton Mills Station on the London and North Western Railway, and delivered by the railway company in Birmingham at 10.10 A.M. After remaining on the platform about three-quarters of an hour it was removed by the respondents to their premises in Birmingham, and immediately on its arrival a portion of it was placed in a tumbler and put on a shelf in the respondents' shop, where it remained until Tuesday, the 28th of February. On that day the milk in the tumbler was transferred to a bottle and sent to the borough analyst, who found it to contain thirty-three per cent. of water.

It was proved that no notification was given by the respondents to the appellant of their intention to have the milk analysed until Wednesday, the 1st of March, when a portion of the same milk was offered by them to him for analysis, but he declined to receive it or to have it analysed.

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The magistrate convicted the appellant, holding that the provisions of section 14 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), did not apply to the case of a purchase by a private individual, but was limited to one by the public officer mentioned in section 13.

The question for the Court was whether his decision was right (1).

(1) Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 6: "No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance and quality demanded by such purchaser, under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases—that is to say,

1. "Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof.

2. "Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent.

3. "Where the food or drug is compounded as in this Act mentioned.

4. "Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation."

Section 12: "Any purchaser of an article of food or of a drug in any place, being a district, county, city or borough, where there is any analyst appointed under this or any Act hereby repealed, shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis."

Section 13: "Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable, under the direction and at the cost of the local authority appointing such

Vesey Fitzgerald, for the appellant.—

There is no distinction as to whether the purchaser under section 14 is a private person or a public officer. The intention was to make the requirements of that section a condition precedent to a prosecution—*Barnes v. Chipp* (2). If not so, it would be possible that the article might be adulterated after coming into the purchaser's possession; and therefore the section directs that the purchaser shall "forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst." The object of the

officer, inspector or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place, to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis."

Section 14: "The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed by the public analyst, and shall offer to divide the article into three parts, to be then and there separated, and each part to be marked and sealed, or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent."

Section 21: "At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the article retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly."

(2) 47 Law J. Rep. M.C. 85; Law Rep. 3 Ex. D. 176.

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section is that the seller may have immediate warning of the case that is going to be brought against him, so that he may meet it; and it is meant to protect him whether the charge is preferred by a private purchaser or the public officer. He cited *Rouch v. Hall* (3).

Baylis, for the respondents.—The magistrate was right in construing section 14 as he did. The words of the section are, "The person purchasing any article with the intention of submitting the same to analysis," which are descriptive of the public officer described in the preceding section. The respondents here did not purchase the milk "with the intention of submitting the same to analysis," and therefore are not that class of purchaser contemplated by the 14th section. To hold otherwise would make the Act in many cases a dead letter, for it must frequently happen that an ordinary purchaser only suspects the adulteration when he has taken the article in question away and kept it for some short time. If the construction put upon the section by the other side is correct, every person purchasing an article must at the moment of purchase determine whether or not he will have it analysed.

FIELD, J.—I am unable to agree with the learned stipendiary magistrate in the conclusion he has come to as to the meaning of this enactment. It was passed in order to put a stop to adulteration in various articles of food and drugs. The Legislature, while imposing, as it has done, heavy liabilities upon the seller of adulterated articles, has at the same time given him certain safeguards in order to prevent the possibility of the articles said to be adulterated being tampered with when no longer in his possession. The intention of the Act was to strike at the moment of time at which the seller parts with the article. This was clearly the intention of the Sale of Food and Drugs Act, 1875, and the seller is still further protected by the amending Act of 1879 (42 & 43 Vict. c. 30), which allows a sample of the article to be procured by an officer in course of delivery

to the purchaser. By section 14 of the Act of 1875 the purchaser of an article with the intention of submitting it to an analysis shall, after the purchase has been completed, give notification to the seller. Now the facts of the case are these: The respondents kept the milk on their premises from the morning of the 26th until the 28th, and had no intention of having the milk analysed, nor did they give any notification to the seller until the expiration of that time. The objection of the appellant is that the provisions of section 14 were not complied with; but the learned magistrate held that the section only referred to the case of a purchase by a public officer who bought with the intention of submitting the article to analysis. The question as to what was the intention of the purchaser at the time of purchase we need not consider, but only whether the limitation put upon the 14th section by the learned magistrate is correct. I am unable to find any good reason why the 14th section should not apply to a purchase by a private individual. The offence aimed at is described in section 6 of the Act. [His Lordship read the section.] The 12th section enables the purchaser of any food or drug to have it analysed by the public analyst; and by the 13th section the public officer there mentioned may procure a sample of the article, and, if he suspects it to have been sold in contravention of the Act, "shall submit the same to be analysed." That section brings the public officer into the same condition as the purchaser mentioned in the preceding section. Then comes section 14, which says that the person purchasing any article with the intention of submitting it to analysis shall take certain steps. There is no reason, it seems to me, why it should be limited to the case of a public officer purchasing, and the words of the section are sufficiently large to admit of this construction. I think the section was meant to cover a case like the present, and that the limitation put upon it by the learned magistrate was not correct. On these grounds I am of opinion that the rule must be made absolute.

CAVE, J.—I am of the same opinion. I need only call attention to the provisions

(3) 50 Law J. Rep. M.C. 6; Law Rep. 6 Q.B. D. 17.

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of sections 20 and 21, which, under the general heading of "proceedings against offenders," bring together the two classes of purchasers mentioned respectively in sections 12 and 13. By section 21, at the hearing of the information, the production of the analyst's certificate shall be sufficient evidence of the facts therein stated, unless the defendant shall require the analyst to be called as a witness, and the parts of the article retained by the person who purchased the article—whether he was an ordinary purchaser or public officer—shall be produced. Now the parts which he may require to be produced are the parts into which the article is divided according to section 14. The 14th section, therefore, contemplates that, both in the case of a purchase by an ordinary purchaser and a public officer, the parts of the article must be retained, and if the defendant requires them, be produced at the hearing. The appeal must be allowed.

Decision reversed.

Solicitors—J. & W. Maude, agents for A. Gledhill, Rugby, for appellant; Royle, Foss-Smith & Royle, agents for Tyndall & Co., Birmingham, for respondents.

1882. { THE QUEEN v. VANE AND OTHERS
June 27. { (*Justices of Cumberland, &c.*).
In re THE GUARDIANS OF PEN-
RITH UNION v. THE OVERSEERS
OF CASTLE SOWERBY.

Elementary Education Acts—33 & 34 Vict. c. 75. ss. 50 and 74—39 & 40 Vict. c. 79. s. 32—Contributory Districts—School Attendance Committee of a Union—Parish not under any other Local Authority.

The guardians of a union comprising the parish of C. S. which had no school board of its own, but by order of the Education Department under the Elementary Education Act, 1870, s. 49, contributed to the schools of a district which had a school board, appointed a school attendance committee under the Elementary Education Act, 1876, ss. 7 and 32, for C. S. and certain other parishes within the union, and under sec-

tion 31 claimed from C. S. a proportion of the expenses of the committee:—Held, that C. S. was, within the meaning of section 32, "a parish . . . not under any . . . local authority within the meaning of the Act," and that, therefore, the committee had power to act for C. S., and C. S. must pay a proportion of the expenses of the committee.

This was a rule obtained on behalf of the guardians of the Penrith Poor Law Union, calling upon two Justices of Cumberland and the overseers of the Poor of the parish of Castle Sowerby, in Cumberland, to shew cause why the Justices should not issue a warrant of distress upon the goods of the Castle Sowerby overseers for 6*l.* 15*s.* 6*d.*, amount of a contribution required from the latter by a precept of the Penrith guardians of the 9th of April, 1880, in respect of certain expenses incurred under the Elementary Education Act, 1876.

The facts appearing were as follows:—

Penrith is a union comprising, amongst other parishes, the parish of Castle Sowerby. No school board has been constituted for the latter, and the schools in it are not under the control of any school board. The parish of Caldbeck which adjoins it is in the Union of Wigton; a school board was constituted for Caldbeck in 1874, and the schools there are under the control of such school board.

In 1874, it having been found convenient that certain children living on the side of Castle Sowerby adjoining Caldbeck should attend a school in the latter parish instead of either of two schools in Castle Sowerby, an order was made by the Education Department, under the Elementary Education Act, 1870, s. 49 (1), that the

(1) 33 & 34 Vict. c. 75. s. 49: "The Education Department may . . . direct that one school district shall contribute towards the provision or maintenance of public elementary schools in another school district or districts, and in such case the former (or contributing district) shall pay to the latter (or school-owning district or districts) such proportion of the expenses of such provision or maintenance, or a sum calculated in such manner as the Education Department may . . . prescribe."

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parish of Castle Sowerby should be a contributory district of the parish of Caldbeck. And the Education Department afterwards, under the same Act, section 50 (1), directed that two persons should be elected by Castle Sowerby to be members of the school board of Caldbeck.

The school board of Caldbeck in 1878 made by-laws for the purposes of the Act of 1870, s. 74 (2), and amending Acts, the interpretation clause of which by-laws said, "The term district means the school district of Caldbeck with Castle Sowerby (contributory)."

The guardians of the Penrith Union in 1877, under the Elementary Education Act, 1876, ss. 7 and 32 (3), appointed a

school attendance committee for certain parishes in the union, among which they

prohibiting, by section 5, the employment, except as in the Act mentioned, of any child who is under the age of ten years, or, being above that age, has not obtained such certificate of proficiency or of attendance at school as is in the Act mentioned, enacts:—Section 7. "The provisions of this Act respecting the employment of children shall be enforced—1. In a school district within the jurisdiction of a school board by that board; and 2. In every other school district by a committee (in this Act referred to as a school attendance committee) appointed . . . if it is a parish, by the guardians of the union comprising such parish. . . . Every such school board and school attendance committee (in this Act referred to as the local authority) shall, as soon as may be, publish the provisions of this Act. . . ."

Section 21: "In a school district not within the jurisdiction of a school board, . . . if it is a parish, the school attendance committee for the union comprising such parish . . . shall make by-laws respecting the attendance of children at school, under section 74 of the Elementary Education Act, 1870, as if such school attendance committee were a school board."

Section 23: ". . . . It shall be the duty of every local authority to enforce the by-laws made by that authority in pursuance of section 74 of the Elementary Education Act, 1870."

Section 28: "Every local authority, but subject in the case of a school attendance committee to the approval hereinafter mentioned, shall direct one or more of their officers, or the officers of the council or guardians by whom the committee are appointed, to act in the execution of this Act and of any by-laws in force within the jurisdiction of such authority, and may . . . pay him or them for so doing. . . ."

Section 31: "A school attendance committee . . . shall not incur any expense or appoint . . . any officer without the consent of the" body "by whom the committee were appointed, and where they are appointed by guardians also of the Local Government Board. . . . The expenses (if any) of" the "committee . . . shall be paid, . . . where the committee is appointed by . . . guardians, out of a fund to be raised out of the poor rate of the parishes in which the committee act, . . . according to the rateable value of such parish. For . . . obtaining

Section 50: "Where one school district contributes to the provision or maintenance of any school in another school district, such number of persons as the Education Department . . . direct shall be elected in the contributing district, and shall be members of the school board of the school-owning district, but such last-mentioned district shall, except so far as regards the raising of money and the attendance of children at school, be deemed alone to be the district of such school board; such members shall be elected by the school board, if any, or, if there is none, by the persons who would elect a school board if there were one, in the same manner as a school board would be elected."

(3) Section 74: "Every school board may . . . with the approval of the Education Department" [and, by a later part of the section, the sanction of Her Majesty in Council] "make by-laws for all or any of the following purposes:—1. Requiring the parents of children of . . . not less than five . . . nor more than thirteen years . . . to cause such children . . . to attend school; 2. Determining the time during which children are so to attend school . . . ; 3. Providing for the remission . . . of . . . fees . . . where the parent . . . is unable . . . to pay the same; 4. Imposing penalties for . . . breach of . . . by-laws; 5. Revoking or altering any by-law. . . ."

(3) The Elementary Education Act, 1876 (39 & 40 Vict. c. 79), after enacting, by section 4, that the parent of every child is to cause such child to receive efficient elementary instruction, failing which he is to be liable to such orders and penalties as are provided by the Act, and

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included Castle Sowerby; and the school attendance committee, under the Act of 1876, s. 31 (3), with the consent of the Penrith guardians and of the Local Government Board, appointed school attendance officers for those parishes.

By-laws for the purposes of the Act of 1870, s. 74, and amending Acts, made by the school attendance committee, and sanctioned by the Queen in Council, included Castle Sowerby; but were not sanctioned till March, 1881.

In April, 1878, the Penrith guardians issued a precept, under the Act of 1876, s. 31 (3), requiring from Castle Sowerby a contribution of 6*l.* 13*s.* 1*d.*, which amount was duly paid.

On the 9th of April, 1880, the Penrith guardians issued another precept to the overseers of Castle Sowerby requiring a contribution of 6*l.* 15*s.* 6*d.*; but the overseers of Castle Sowerby refused to pay the same, on the ground that Castle Sowerby was within the jurisdiction and control of Caldbeck, and not of the guardians of the Penrith Union, and therefore could not be called upon to pay any part of expenses incurred by the school attendance committee of the Penrith Union.

The overseers of Castle Sowerby having been, in September, 1881, upon the application of the Penrith guardians, under 2 & 3 Vict. c. 84 (4), summoned before the above-mentioned two Justices, acting in and for the petty sessional division of

Leath Ward, for the non-payment of the 6*l.* 15*s.* 6*d.*, the Justices dismissed the complaint.

This rule having (on June 8) been obtained,

Macaskie shewed cause.—The school attendance committee of the Penrith Union had no power to act for the parish of Castle Sowerby, Castle Sowerby being, by virtue of the Act of 1870, s. 50 (1), part of the district of the Caldbeck school board for the purpose of "the attendance of children at school," and therefore not such a parish as is described in the Act of 1876, s. 32—"parish . . . not . . . under any other local authority within the meaning of this Act"—that is to say, section 7. The school board of Caldbeck had, under the Act of 1870, s. 50 (1), and s. 74 (2), in respect of Castle Sowerby as well as Caldbeck, the power of compelling attendance of children at school. No doubt the language of section 50, providing for the mode of electing in the contributing district members of the school board of the school-owning district, shews that the contributing district may itself have a school board; but that possibility cannot restrict the implication from the words "so far as regards the raising of money and the attendance of children at school," that for those purposes the contributing district is to be part of the school-owning district.

Charles, Q.C. (*Malden* with him), in support of the rule, was not called upon.

FIELD, J.—I am of opinion that the Justices ought to have issued the warrant applied for by the guardians of the Penrith Union. A question of considerable complication is involved, namely, as to the powers of a school attendance committee of a union in respect of a parish within it which, like Castle Sowerby, has no school board of its own, but is, by virtue of an order of the Education Department under the Elementary Education Act, 1870, s. 49, a district contributing to the schools of a school board district. But I have come to the conclusion that, on the true construction of the Acts, Castle Sowerby is bound to share the burden of the expenses which the school attendance committee of the

payment . . . the . . . guardians shall have the same powers as they have for . . . obtaining contributions to their common fund under the "Poor Law Acts.

Section 32: . . . "A school attendance committee appointed by guardians shall act for every parish in the union which is not for the time being under any other local authority within the meaning of this Act. . . ."

(4) 2 & 3 Vict. c. 84. s. 1, enacts that, where "any contribution by overseers . . . of moneys required by the . . . guardians" of "any union . . . for the performance of their duties shall be in arrear, . . . two justices . . ." may "summon the . . . overseers, . . . and after hearing the complaint, . . . cause the amount . . . to be levied, . . . as moneys assessed for the relief of the poor may be levied. . . ."

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Penrith Union have incurred for the benefit of the children of Castle Sowerby and other parishes.

CAVE, J.—I am of the same opinion. The Act of 1870, by section 74, gave power to every school board to make by-laws as to the attendance of children at school. But in the case of a parish made, under section 49, a contributory district, no power to make such by-laws was given; for section 50 cannot, I think, be read as giving in combination with section 74 such a power to the school board of the school-owning district, notwithstanding the words of section 50, on which Mr. Macaskie relied; and if the school board of the school-owning district had no such power over the contributory district, nobody had. But by the Act of 1876 this is remedied. By section 32, it is enacted that "a school attendance committee appointed by guardians shall act for every parish in the union which is not for the time being under any other local authority within the meaning of this Act." No school board or authority, other than the school attendance committee of the Penrith Union, has the power of compelling attendance of children at school in respect of Castle Sowerby. Consequently, Castle Sowerby being a parish within the Penrith Union, the school attendance committee of the Penrith Union has power to act for it; and Castle Sowerby must accordingly bear its share of the expenses incurred by the committee.

Rule absolute.

Solicitors—Gedge, Kirby, Millett & Morse, agents for Arnison & Co., Penrith, for the Penrith guardians; Thomson & Edwards, agents for S. K. James, Penrith, for the overseers of Castle Sowerby.

1882. } BEATTY AND OTHERS v. GILL-
June 13. } BANKS.

Riot—Unlawful Assembly.

A lawful assembly is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which opposition will in all probability give rise to a breach of the peace by those creating it.

This was an appeal from a decision of the Justices at the Petty Sessions held at Weston-super-Mare, where the appellants were charged, for that they did unlawfully and tumultuously assemble, with other persons to the number of a hundred or more, in public thoroughfares, &c., to the disturbance of the public peace. On the hearing, the Justices found that the allegations in the complaint contained had been proved, and ordered the appellants to be severally bound over in their own recognizances, with two sureties, to keep the peace and be of good behaviour for the term of twelve calendar months, and in default to be imprisoned for three calendar months, or until they should comply with the order. The appellants thereupon required the Justices to state a Special Case for the opinion of the High Court. According to this case, it appeared that at the hearing of the complaint the following facts were proved:—

(a) The Salvation Army is an organised body of persons, who are and have been for some time in the habit of forming themselves into processions of more than a hundred persons, and in such processions of parading the principal streets and public places of the town of Weston-super-Mare.

(b) These processions are formed at the hall of the Salvation Army, and, after their formation, proceed, headed by a musical band and flags and banners, through the aforesaid streets and places, collecting, and for the purpose of collecting as they go a mob of persons, with whom, attended by much shouting, singing, uproar and noise, they eventually return to the said hall, where a meeting is then held.

(c) The appellant William Beatty is captain and a leader of the Salvation

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Army, and organises and directs these processions and meetings.

(d) The appellants William Henry Mullins and Thomas Bowden are also leaders of the Salvation Army, and assist in organising and directing the processions.

(e) There is another organised body of persons at Weston-super-Mare, called the Skeleton Army, who also parade the streets, and are antagonistic to the Salvation Army and its processions.

(f) There are numbers of other persons of Weston-super-Mare who, so soon as the Salvation Army has formed for the purpose of parading the streets as aforesaid, are in the habit of assembling in a mob of great numbers about and around and in front of the Salvation Army. Some of these, together with the Skeleton Army, assemble to dispute the passage of the Salvation Army through the streets, some to encourage such passage with shouting, uproar and noise, to the great terror, disturbance and inconvenience of the peaceable inhabitants of the town, and to the endangering of the public peace.

(g) On several occasions previous to the 23rd of March in this year, the procession of the Salvation Army, accompanied by such a mob as aforesaid, has come into collision with the Skeleton Army and other persons who are antagonistic to the Salvation Army, and thereupon a free fight, great uproar, blows, tumult, stone-throwing and disorder, have ensued.

(h) On the 23rd of March, 1882, the Salvation Army formed their procession and paraded the streets and places, accompanied by a disorderly and riotous mob of over 2,000 persons, who had been collected as the Salvation Army proceeded. In the midst of the mob was fighting and great disturbance, stone-throwing and noise. The police were for a long time overpowered and unable to cope with the disturbance, and the Salvation Army forced their way through several public streets to a public place called the Railway Parade, where a general fight occurred. The appellant William Beatty led and directed the Salvation Army on this occasion, but neither he nor the other appellants were seen to commit any overt act

of violence. The police were ultimately reinforced, and the crowd then dispersed. In all probability bloodshed and injury were prevented by the interference of the police.

(i) The matters in the last paragraph set out caused great terror and alarm in the minds of the peaceful inhabitants of the town, who believed, and had good reason to believe, that the aforesaid processions would lead to a repetition of the aforesaid matters, and would endanger life, property and the public peace, and who, in consequence, brought the matter to the notice of the sergeant of police in charge of the town, and made divers complaints to him thereon.

(j) In consequence of the matters aforesaid, the notice annexed to this case was issued, and signed by two Justices of the peace acting for the divisions, and copies thereof were placarded in conspicuous parts of the town, and were served on the appellant Beatty.

(k) On Sunday, the 26th of March, at 10.30 a.m., whilst numbers of the inhabitants of the town were proceeding to their respective places of worship, the Salvation Army, under the direction of the appellants, was formed into a procession of a hundred persons or more, and commenced to march away from the hall through the streets and public places of the town. The appellants marched at the head of the procession, which was surrounded by a tumultuous and shouting mob of some hundreds of persons, which rapidly increased as the procession moved on.

(l) The police-sergeant met the procession (after it had paraded through certain principal and public streets) in a public street called Walliscote Street, and with others of the police force stopped the advance of the procession, and asked the appellant William Beatty if he was leading the procession, and if he had received a copy of the notice. The appellant Beatty said he was leading the procession, and that he had received one of the notices. The sergeant told the appellant Beatty that he must obey the notice, and that he must desist from leading the procession, and must disperse at once, or he would be arrested. The appellant Beatty refused to

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comply, and marched on at the head of the procession some twenty yards farther, and told the sergeant he should still proceed. Thereupon he was arrested. The appellants William Henry Mullins and Thomas Bowden then took the direction of the procession, and persisted in leading it on, whereupon they also were arrested. Neither of the appellants was guilty of any overt act of violence other than the acts aforesaid, and submitted quietly to their arrest.

(m) The aforesaid assembling of the Salvation Army, and march of the procession and collection of the mob, was a terror to the peaceful inhabitants of the town, and to the persons going to their places of worship as aforesaid, and was calculated to endanger, and did endanger, and was calculated to cause a breach of the peace, and there was good and sufficient cause for the inhabitants to suppose, and any rational person knowing the aforesaid circumstances would suppose, that unless the said procession and mob were dispersed there would be a repetition of the aforesaid violent and tumultuous acts, and that there would be a breach of the peace.

(n) The appellants intended to parade their procession through the principal streets and public places of the town, and to collect on their march a large mob of persons to accompany them, and they had good reason to expect that they would come into collision with the Skeleton Army and the other persons antagonistic to themselves, and had good reason to expect that there would be the same fighting, stone-throwing and disturbance as there had been on previous occasions, and intended on meeting such opposition to force their way through the streets and places as they had done on previous occasions. The appellants contended at the hearing that there had not been any unlawful and tumultuous assembling on their part, that they had not been guilty of the charge and complaint made against them, and that their arrest had been unlawful, and that they should be discharged; but the Justices refused to discharge them.

The questions of law for the opinion of the Court were whether the aforesaid facts found to be proved as aforesaid, constituted

the offence charged in the information and complaint, and whether the order made against the appellants was valid.

The following was the notice referred to in the case:—

"PUBLIC NOTICE.

"Whereas it hath been made to appear unto us, the undersigned, two of Her Majesty's Justices of the peace for the county of Somerset, acting in and for the division of Axbridge, in the same county, upon the oath of divers persons, that a riotous and tumultuous assembly did take place on the night of the 23rd day of March, one thousand eight hundred and eighty-two, in certain public streets at Weston-super-Mare, in the said county, and further, that there are reasonable grounds for apprehending a repetition of such riotous and tumultuous assembly in the public streets of Weston-super-Mare aforesaid, we do therefore hereby require, order and direct all persons to abstain from assembling, to the disturbance of the public peace, in the public streets within the said parish of Weston-super-Mare."

E. Clarke, Q.C. (with him *Sutherst* and *L. C. Jackson*), for the appellants, contended that there was no intention to commit an unlawful act, nor to do a lawful act in an unlawful way. No definition of an unlawful assembly goes so far as to include a case where the assembly is with a lawful intent, and not in its nature tumultuous or riotous, but where by reason of the riotous conduct of others a tumult is likely to ensue. An act which is right in itself does not become wrong by reason of the apprehension of misconduct in other persons.

There is no evidence that the assembly was for unlawful purposes, or of any unlawful act on the part of the appellants—*The Queen v. Neall* (1) and *Redford v. Birley* (2).

A. R. Poole (*Valpy* with him), for the respondents.—The intention of the appellants, though not *per se* unlawful, was to do that which would, as they well knew

(1) Car. & P. 431.

(2) 3 Stark. N. P. C. 76.

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cause others to commit a breach of the peace. There were here circumstances of terror in this meeting of great numbers, such as cannot but endanger the public peace, and raise fears and jealousies among the Queen's subjects—*Russell on Crimes* (3) and *The King v. Vincent* (4).

FIELD, J.—In my judgment this order cannot be supported. The appellants belong to an association of persons whose object is to reclaim those not having any taste for religious matters, and to induce them to join in religious exercise. No one imputes any other object to them; and so far from any wish on their part to carry out this object by force, it is not disputed that their opinions are quite adverse to any such means being employed; and the evidence is that when arrested no resistance was offered by the appellants or any other members of the association. With a lawful object, and no intention of acting with violence, they assembled in numbers and marched in procession. No one can say that that was unlawful.

The appellants complain that they have been found guilty of a crime in consequence of so assembling. They were charged with having unlawfully and tumultuously assembled with others, to the disturbance of the public peace, and against the peace of the Queen. To render conviction possible this offence must be proved to have been committed. They certainly did assemble in great numbers, but such assembly to be unlawful must be tumultuous and against the peace. As far as the appellants are concerned, their conduct was neither tumultuous nor against the peace. But it is said that their conduct on this occasion was such as on former occasions had produced riots and disturbed the peace to the terror of the inhabitants, and therefore that, knowing such a state of things would occur again, they were liable to this charge. Every one must be taken to intend the natural consequence of his acts, and therefore if this disturbance of the peace was the necessary consequence of the acts of the appellants they would be liable, and

the Justices would have been right in binding them over. But the evidence does not shew this, but that the disturbance was caused by the interference of others, and no acts of violence were committed by the appellants. In *Russell on Crimes* (3) an unlawful assembly is thus defined:—"An unlawful assembly, according to the common opinion, is a disturbance of the peace by persons basely assembling together with an intention to do a thing which if it were executed would make them rioters, but neither actually executing nor making a motion towards its execution."

Mr. Serjeant Hawkins, however, thinks this much too narrow an opinion; and that any meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the King's subjects, seems properly to be called an unlawful assembly. A number of examples are then given, but in each of them the circumstances of terror are inherent in the assembly itself, in respect either of its object in, or mode of assembling, and differ widely from this case, where the only circumstance of terror arises from the fact that opposition to the assembling of members of this association has been formally organised by others outside it.

The finding of the Justices comes to this: that a man may be indicted for doing a lawful act, if he knows that his doing it will cause another to do an unlawful act. There is no authority for such a proposition, and I therefore think the appeal must be allowed.

CAVE, J., concurred.

Appeal allowed with costs against the Justices.

Solicitors—Whittington, Son & Barker, for appellants; Crowder, Anstie & Co., agents for Simmons, Axbridge, for respondents.

(3) 4th ed. p. 387.

(4) 9 Car. & P. 91.

1882. } **THE QUEEN (on the prosecution
May 22, of the Penarth Local Board)
25, 26. } v. THE LOCAL GOVERNMENT
BOARD AND GEORGE TAYLOR.**

Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 150 and 268—Paving Streets—Apportionment of Expenses—Disputing Apportionment—Notice of Demand—Appeal by Party aggrieved—Time for Appeal—Memorial to Local Government Board—Grounds of Appeal—Prohibition.

By the Public Health Act, 1875, s. 150, a local authority may, in certain cases, give notice to owners of premises adjoining streets to level, pave, &c., within a time to be specified in such notice; and if such notice is not complied with, the urban authority may do the work themselves, and recover summarily the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration.

By section 257, the time (six months) within which summary proceedings are to be taken for the recovering of expenses is to be reckoned from the date of the service of notice of demand. Where such expenses have been settled and apportioned by the surveyor as payable by an owner, such apportionment shall be binding and conclusive, unless within three months from service of notice on him of the amount so settled, he shall by written notice dispute the same.

By section 268, an appeal is given to a person aggrieved by the chairman of a local authority in any case in which the local authority are empowered to recover summarily expenses incurred by them, or to declare such expenses to be private improvement expenses, within twenty-one days after notice of the decision, by a memorial stating the grounds of complaint, to the Local Government Board, who may make such order in the matter as may seem equitable.

On the 4th of May, 1881, a local board gave notice, under section 150 of the Public Health Act, 1875, to T., an owner of premises adjoining a street, to level, pave, &c. T. having made default the board did the works themselves. On the 19th of Sep-

tember, 1881, an apportionment was made by the surveyor of the board, and a notice was served on T. that his proportion was 252*l.* odd, and that the apportionment upon him would be binding and conclusive unless disputed within three months from the date of the notice. On the 20th of December, 1881, notice of demand was served upon T. requiring payment of the above sum, and threatening proceedings in case of non-payment within a certain time. On the 10th of January, 1882, T. entered an appeal, under section 268 of the Public Health Act, by sending a memorial to the Local Government Board, which did not dispute the apportionment, but complained that a considerable portion of the works in respect of which the demand was made was not required, and that the cost incurred upon them was altogether excessive:—

Held, that there was no decision whatever in respect of which T. was aggrieved until the notice to pay; and that upon appeal to the Local Government Board within twenty-one days afterwards T. had a right to dispute the necessity of the works, as well as the sums expended upon them. Held, also, that inasmuch as the Local Government Board had jurisdiction to entertain an appeal from the notice of the decision of the board to proceed summarily, prohibition would not lie, on the ground that they would perhaps take into consideration upon that appeal matters which did not properly arise before them.

Quære, as to whether prohibition will lie at all in the case of a tribunal constituted as the Local Government Board is.

This was a rule calling upon the Local Government Board and George Taylor to shew cause why a writ of prohibition should not issue directed to them to prohibit them from proceeding in the matter of a certain appeal brought by the said George Taylor against the demand made upon him by the Penarth local board for the payment of several sums, amounting in the aggregate to 252*l.* 10*s.* 9*d.*, alleged to be due by him for private improvement works in respect of premises in Kymin Lane.

The following are the material facts:—

On the 4th of May, 1881, the Penarth local board, under the powers conferred

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upon them by the Public Health Act, 1875, served upon Mr. Taylor and other occupiers of premises fronting, adjoining or abutting upon certain streets within the urban sanitary district of Penarth, the usual notices to level, pave, &c., the said street within twenty-one days from the date of the said notice, and in manner specified therein.

On the 19th of September, 1881, Mr. Taylor having failed to do what was required, the Penarth local board served upon him further notices under the hand of their surveyor, stating that the notice of the 4th of May not having been complied with, the urban sanitary authority had executed the works referred to therein. The notices contained the usual apportionment by the surveyor, which shewed sums due from Mr. Taylor amounting in the aggregate to 252*l.* 10*s.* 9*d.* The notices concluded as follows: "Further take notice that the aforesaid apportionment will be binding and conclusive upon you, unless within the expiration of three months from the day of the date of this notice you shall by written notice to the urban sanitary authority dispute the same."

On the 20th of December, 1881, the usual written notice of demand was served upon Mr. Taylor requiring payment of the above sums, and threatening proceedings if the amount was not paid within fourteen days.

On the 21st of December, 1881, Taylor gave notice that he disputed the apportionment.

On the 6th of January, 1882, Mr. Taylor's solicitors wrote to the clerk to the Penarth board, stating that Mr. Taylor did not purpose disputing the apportionment, "but his intention is to memorialise the Local Government Board on the ground that the sum expended with regard to the private improvements of the roads was an excessive sum, in consequence of a considerable quantity of the work which was done being unnecessary."

On the 10th of January, 1882, Mr. Taylor sent a lengthy memorial by way of appeal under the 268th section of the Public Health Act, 1875. The memorial, after complaining that a considerable portion of the works in respect of which the

demand was made was not required, and that the expenditure upon them was enormous and highly unreasonable, asked relief from the excessive portion of the amount.

On the 31st of January, 1882, in answer to an enquiry by the Local Government Board, who wrote acknowledging the memorial, Mr. Taylor wrote a letter which contained the following passage: "I do not appeal on the ground of apportionment; if I disputed the apportionment I should have proceeded to arbitration. I allege that the total sum expended was improperly expended, and therefore that the sums sought to be recovered from me are not reasonable" (1).

(1) By 38 & 39 Vict. c. 55. s. 150: "Where any street within any urban district (not being a highway repairable by the inhabitants at large), or the carriage-way, footway or any other part of such street is not sewered, levelled, paved, metalled, flagged, channelled and made good, or is not lighted to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining or abutting on such parts thereof as may require to be sewered, levelled, paved, metalled, flagged, channelled or to be lighted, require them to sewer, level, pave, metal, flag, channel or make good, or to provide proper means for lighting the same, within a time to be specified in such notice. Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section and an estimate of the probable cost thereof to be made under the direction of their surveyor. . . . Such plans, sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice. If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein; and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act; or the urban authority may by order declare the expenses so incurred to be private improvement expenses."

By section 252: "Any complaint or information laid in pursuance of this Act shall be made or laid within six months from the time when

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The Solicitor-General (Sir F. Herschell), Channell and Hannen shewed cause.—The question of prohibition, if any such remedy exists, against a body constituted as the Local Government Board is, must

the matter of such complaint or information respectively arose."

By section 257: "Where any local authority have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner of such premises when the works are completed for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred. In all summary proceedings by a local authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand. Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same. The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rate under this Act."

By section 268: "Where any person deems himself aggrieved by decisions of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said board may seem equitable, and the order so made shall be binding and conclusive on all parties."

depend upon whether there is any jurisdiction to entertain any of the matters upon which Mr. Taylor has appealed. The real question to be determined is whether the appeal is in time; and this depends on the construction to be placed on the 268th section of the Public Health Act, 1875, which gives to persons aggrieved by the decision of a local authority, in cases where they are empowered to recover expenses summarily or to declare such expenses to be private improvement expenses, the right to appeal "within twenty-one days after notice of such decision" by a memorial addressed to the Local Government Board. Expenses incurred under section 150 may be recovered in a summary manner or made private improvement expenses. Until there is notice to adopt one or other of those proceedings, there is no decision which gives any right of appeal under section 268. The notice of demand gives the right to appeal, and the twenty-one days begins to run from the service of such notice. This appeal is consequently in time. There is really no other notice from which he could appeal. Notice to do the work, under section 150, is not a decision from which an appeal would lie; *non constat* if the notice is not complied with that the matter will proceed further, the power given to the local board to execute the works themselves being entirely discretionary. The board may not think fit to act; the notice, therefore, cannot fairly be termed "notice of a decision," there being really no decision at all. The first decision by which Mr. Taylor became an aggrieved party was the notice to pay.

[GROVE, J.—In general language, notice of demand means something very different to a decision. A decision is that in which a certain conclusion is arrived at; a notice of demand is something to carry out a previous decision. Notice of a demand is generally something subsequent to a decision.]

When the board determined to do the work there was no decision which in any way affected Mr. Taylor so as to give him a right to appeal. His complaint is not that the board have done the works, but that they have spent far too large a sum over them. Notice of demand, with an inti-

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mation that unless Mr. Taylor paid he would be summoned, is notice of a decision to make him pay and not to treat the expenses as private improvement expenses. Notice of an apportionment of a sum total between the various owners is not a notice of a decision of the board intended to confer a right of appeal. The Legislature has provided a proper remedy in such a case—namely, arbitration.

Again, if the Local Government Board had jurisdiction to entertain any appeal on the part of Mr. Taylor, they cannot be prohibited from proceeding with it on the ground that they may perhaps take into consideration on that appeal matters which do not properly arise upon the appeal. The appeal is from the decision that this sum of money is to be recovered summarily; it cannot be denied that the board are entitled to entertain that appeal; and upon such appeal it is contended that Mr. Taylor is entitled to argue any ground before the Local Government Board to shew why the determination of the local board should not be carried out. The determination is this, "We will make you pay 252*l.* for the expenses of this work." From that determination Mr. Taylor has appealed within proper time. Upon that appeal he is entitled to argue any ground for the purpose of shewing why he shall not be compelled to pay. The Legislature intended to give the Local Government Board the widest possible discretion in matters of appeal; they are empowered to "make such order in the matter as to the said board may seem equitable." If once the case comes within the 268th section, and there is power to entertain an appeal, the Local Government Board may go into the whole matter.

Lastly, prohibition is not a proper remedy at all to the Local Government Board. Prohibition, doubtless, lies to all inferior Courts; but this tribunal is not a Court at all. The mere fact that somebody exercises a judicial function will not constitute such body a Court, so as to enable prohibition to go.

Charles, Q.C., and *A. T. Lawrence*, in support of the rule.—This appeal is altogether out of time, and none of the grounds of complaint can now be entertained by

the Local Government Board. If it was intended to challenge the propriety of the works, or their cost, that should have been done within twenty-one days from when the notice to do them, or of their cost, was received. Having done neither, and having allowed three months to elapse, the amount settled as Mr. Taylor's proportion has become binding and conclusive upon him. It is too late on any appeal from the demand note, or rather the decision of which the demand note is notice, to challenge the original necessity of the work, and the cost at which the local board have done it; the only thing open, then (if anything), is to appeal against the decision of which that is notice, namely, to levy the amount summarily, and not by way of private improvement expenses, a ground which the applicant has expressly disclaimed any intention of taking advantage of. The appeal insisted upon is no longer open, though possibly an appeal may lie upon something else.

[NORTH, J.—Can we prohibit because wrong grounds of appeal are suggested?]

It is contended that the whole appeal is wrong, and that there is absolute want of jurisdiction. The question whether there is jurisdiction or not to entertain a particular appeal must depend upon what is brought before the Court on affidavit; that being so, Mr. Taylor's admissions conclusively shew that the appeal on the question he desires to raise is out of time. The ground of appeal raised by the memorial is abandoned, and the very object of compelling an appellant to state the grounds of his complaint in his memorial is that both parties may know what they are going to fight about. The test of whether prohibition will lie or not in a case like the present depends upon whether the Local Government Board is a tribunal exercising judicial discretion, which it clearly does under the provisions of the 268th section.

[The following cases were cited during the argument:—*The Tottenham Local Board v. Rowell* (2), *Grece v. Hunt* (3),

(2) 46 Law J. Rep. Exch. 432; Law Rep. 1 Ex. D. 514.

(3) 46 Law J. Rep. M.C. 202; Law Rep. 2 Q.B. D. 389.

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Simcox v. The Handsworth Local Board (4), *Hesketh v. The Atherton Local Board* (5), *Cook v. The Ipswich Local Board* (6), *The Mayor of London v. Cox* (7), *Bayly v. Wilkinson* (8), *Wilson v. The Mayor of Bolton* (9), judgment of Hannen, J.]

GROVE, J.—In this case the rule *nisi* was granted calling upon “the Local Government Board and George Taylor to shew cause why a writ of prohibition should not issue, directed to them, to prohibit them from proceeding further in the matter of a certain appeal by the said George Taylor against the demand made upon him by the Penarth local board for the payment of several sums, amounting in the aggregate to 252*l.* 10*s.* 9*d.*, alleged to be due by him for private improvement works in respect of premises in Kymin Lane.” Now I observe that the rule is general in its terms, and I see it prohibits the Local Government Board and George Taylor from proceeding—that is, proceeding, in fact, by way of appeal against the demand for 252*l.* 10*s.* 9*d.* If we were, therefore, to prohibit him in the terms of this rule, we should prohibit him from any appeal at all. We should enjoin or prohibit him, and say, “You are not to proceed in appealing against this charge upon you of 252*l.* 10*s.* 9*d.*” I am of opinion that this rule should be discharged.

First of all, I think the rule which was granted, if we made it absolute, would be a rule for an absolute prohibition against his proceeding in any way. Now he has, and it is admitted that he has, a right of appeal under the 268th section. The 268th section is, “that where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary way any expenses

incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after such decision, address a memorial to the Local Government Board stating the grounds of his complaint, and the Local Government Board may make such order in the matter as to the said board may seem equitable.” Now he has complied with that. He has, within twenty-one days after notice had been given him of some decision,—I will not say what at present—addressed a memorial to the board, and therefore he has come within this clause; and it is admitted that he undoubtedly has a right of appeal, and that he was within time as to that appeal upon the question whether the board can recover it, as they say they can do, in a summary manner, or whether they will declare the expenses to be private improvement expenses, in which case the expenses will be a charge upon the land and thrown over a great many years. Now if we were to prohibit in the terms of this rule, we should prevent his appealing upon that which it is admitted he is entitled to appeal upon; and the grounds upon which we are asked to do that, is because in his memorial of appeal he has not stated—either not stated at all or not stated with sufficient accuracy—that the only ground, or that one of the grounds, upon which he seeks to appeal is against these expenses of 250*l.* odd being recovered from him in this summary manner.

Now I am of opinion, although perhaps it will be unnecessary to go so far, that the memorial is not conclusive upon him—if he is in time and has a right to appeal—because he has failed to state the right ground upon which he may appeal, or has stated it incorrectly. Nothing has been shewn me in the arguments of this case that if any mistake has been made in the memorial, the tribunal of appeal, if I may so call it, may not amend that, or allow him to amend that. The memorial is necessary as to fixing the time, because this memorial is, in fact, a notice of appeal, and he must do that within twenty-one days after the notice of the decision to him.

But it appears to me that after that, the memorial is a matter of procedure only, and not binding and conclusive, and it is

(4) *Ante*, p. 168; Law Rep. 8 Q.B. D. 39.

(5) 43 Law J. Rep. M.C. 37; Law Rep. 9 Q.B. 4.

(6) 40 Law J. Rep. M.C. 169; Law Rep. 6 Q.B. 461.

(7) 36 Law J. Rep. Exch. 225; Law Rep. 2 E. & Ir. App. 239.

(8) 16 Com. B. Rep. N.S. 161; 33 Law J. Rep. M.C. 161.

(9) 41 Law J. Rep. M.C. 4; Law Rep. 7 Q.B. at page 106.

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not always to be taken by the Court as the only matter upon which the Court of Appeal can decide. It certainly would be otherwise very dangerous, because we should in all cases similar to this have a person virtually deprived of his appeal, unless his memorial was most skilfully drawn, and unless it was, when scanned by an acute lawyer, found sufficient to properly state his grounds of appeal.

I think, therefore, that it would be unreasonable and a great hardship upon the party having otherwise a clear right of appeal. Therefore, I certainly am of opinion that, even if the true ground of appeal had been omitted altogether from this memorial, that would not prevent the Local Government Board from allowing him to go into it, if he could satisfy them that he was fairly entitled to go into it. It is, however, unnecessary to decide that point, for two reasons: first of all, I think this memorial, not perhaps in the best possible terms, does include the admitted ground of appeal, because at the conclusion he says, "Under the above circumstances" (having given a narration of them in considerable detail), "I address this memorial to the Local Government Board, so that I may learn whether the board consider that it is equitable"—the words in section 268 are, "the board may make such order in the matter as the said board may deem equitable"—"that I should pay the heavy sums sought to be enforced against me, which I submit (for the foregoing reasons) are excessive." Now that, no doubt, coupling the last part, would seem to shew that he objects against the excess of the sums; but it seems to me equally a complaint that he is called upon to pay the heavy sum of 252*l.*, and that under this clause he may fairly say to the board, "Well, if you do not consider the sums excessive, still they are excessive to me, and I shall ask you to allow me to pay them, in fact, by instalments, or, in the alternative, to declare them to be private improvement expenses, because then I shall not have to pay the 252*l.* down, but shall have it spread over a number of years." I think he is quite within that case. Upon those grounds I think we should be legally wrong if we prevented his appeal being heard, and granting what we are required

to do by the rule in this case, and what we should grant if it were made absolute, a prohibition against his appeal.

But, secondly, upon the main point which has been argued here, and which turns upon section 268 and section 257, I do not really read or construe section 257 in the same way as the learned counsel in support of the rule construe it. It is necessary to read again the portion of section 268 which applies to this case: "Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses, he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board." Now there is nothing, curiously enough, in this Act, under the first alternative, which, in the ordinary sense of the word "decision," can be called a decision. The whole matter is a series of consecutive steps. First, the local board have to give notice to the owner of the property that he is to do certain repairs. It may be in one sense of the word a "decision," but it is not done by anything like an order or judgment of a tribunal. It is merely to give him notice to do it. It may be said that imports a decision that he shall do it. It is very difficult to say that that necessarily does import a decision, because they may give him a notice to do certain repairs, and the next day or week afterwards they may find out that they either want more or less repairs. Each of those would be a decision if we are to count the former as a decision.

Then again, they are to give him notice of apportionment,—that is, of the share of the repairs to which his property is liable—because if he does not do it upon their notice, they are empowered then to do it themselves, and of that they may give notice. Now, are each of those decisions, or notices of a decision? It is very difficult to say what the particular decision referred to in the section is, where there is nothing in the Act, except perhaps the order which is spoken of with regard to private improvement expenses, which in ordinary legal construction can be called a "de-

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cision." The Act must mean something, and therefore we must take it that there is something which imports a decision. Now, certainly, with regard to the first of the three notices—because there are three notices given in this case—the first was a notice to do the paving work; the second was a notice that the surveyor had apportioned a sum as Mr. Taylor's share of doing that work; and the third notice was a demand for payment of the amount of the apportionment by the surveyor, and a notice that, in default of that, they would proceed summarily, as stated in section 268. Now this last one is a notice of some decision. Whether it means a notice of the first, or the last, or of all the decisions, may be doubtful, but, at all events, it was a notice of some decision, and it is the first time upon which he has received any notice to this effect, that he is thereby required to pay the sum with which they allege him to be chargeable.

Now within twenty-one days of that he has appealed and has addressed a memorial, and as to that he is in time. It is argued that each of these steps is a decision, and in order to entitle him to appeal, he should have appealed against each of these steps, but more particularly against the apportionment, within twenty-one days. The learned counsel in support of the rule contend that Mr. Taylor cannot now appeal in any way against either the apportionment—that is, a decision of the sum which is apportioned as his share—or against the total sum for expenses for which all the different contributories—if I may so call them—would be liable, because, under section 257, the time has expired for any possible appeal, because not only is the apportionment by the surveyor binding, but the actual sum upon which sum he does apportion is also binding. Now these are the words of the portion of the section which refers to this: "Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive upon such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall

by written notice dispute the same." Now, it has been argued that these words, "shall be binding and conclusive," apply not only to the apportionment—that is to say, to the relative share which is apportioned to the particular owner—but also to the amount of that sum which is apportioned to him; and not only that, but also to the total amount of expenses out of which the sum so apportioned is applied to him as the share upon which he is to pay. I own I have felt some doubt as to the meaning of this clause, but I have come to the conclusion that all the clause does mean is, that it is binding as to the apportionment; but it is not binding, at all events, as to the total sum. He must take the apportionment as final, and if the total sum be admitted, and the apportionment is proper, then, of course, the share of the sum also becomes binding. But, in my judgment, the section is not applicable to the assessment of the total expenses for the district, but only applicable to the relative proportion which he will have to pay, assuming that such expenses for the work to be done are correct, and the works are themselves proper to be done.

Now if the words "such apportionment shall be binding and conclusive upon such owner" stood alone, there could be no doubt, at least in my mind, that such apportionment would mean the apportionment, and the apportionment only. Then is it altered by the subsequent words of the section, which say that "unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same"? In my judgment that only refers to the provisions of what the notice must contain, because the notice of apportionment must give him notice of what sum is claimed—otherwise he would not know what was asked from him, and therefore it is necessary that it should give the notice of the sum claimed; but it does alter the previous part of the clause, which says, not that such apportionment shall be binding both as to the apportionment and as to the sum, but only such apportionment shall be binding; and therefore it seems to me that the last half of the section does not

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alter the ordinary grammatical meaning of the term "such apportionment," but it is only a proviso of what the notice shall contain. In other words, every notice shall not be, "I hereby give you notice that you are apportioned to pay one-tenth of the total expenses incurred," but that "You are required to pay 200*l.*," or whatever it may be, being one-tenth of the total expenses, being a proviso that the notice shall be explicit as to the sum and as to the apportionment. Now, if we look at the actual notice of apportionment, it certainly does not look like a decision. It is framed in these words: "Whereas the expenses incurred by the said urban sanitary authority, in levelling, paving, metalting, making, flagging and channelling the said lane, amount to the sum of 375*l.* odd." There is no decision in that; there is no statement how that is arrived at. All they say is, "We have incurred these expenses; we have paid this money." It is very difficult to say that that is a decision from which he is to appeal within twenty-one days. What is he to appeal from? The only question upon such an appeal would be, "Have you incurred expenses, or have you not?" The local board say, "We have incurred expenses; here are the vouchers; we have incurred expenses to the amount of 375*l.*, and therefore this appeal must be decided in our favour." Therefore, according to the terms, it is only a notice that they have spent those sums of money. Then it goes on to say, "I, the undersigned, being the surveyor, in pursuance of the 150th section, do hereby apportion" so much. That may possibly be a decision; it may be a notice that the surveyor, at all events, has decided that he apportions the sum named to the particular person. It does not touch at the rectitude or otherwise of the first clause, namely, whether the expenses incurred are proper expenses or not. It is a notice, and a notice of apportionment, and in that sense may be, and I think is, a decision of the apportionment. Now that "apportionment" bears the meaning I have put upon it, and which was my first impression, though I confess it was shaken by the argument of Mr. Charles, is clear, *prima facie* at all events, from the opinion of the learned Judges in the case of *Hes-*

keth v. The Atherton Local Board (5). There the question was this: the owner disputed his liability, and said the highway was repairable by the inhabitants at large—and therefore the question was undoubtedly not quite the same as here; but there, in giving judgment, Mr. Justice Blackburn says, "Section 63" (which I may take it is in the same words as this section; it uses the word "proportion," but it really is admitted by the counsel in argument to be substantially the same as section 257 of the present Act) "is confined to the apportionment, and it is that, and that alone, that is made conclusive and binding. The Justices were therefore wrong in deciding that it was not open to the appellant to prove that the street was an ancient highway."

But the words of Mr. Justice Quain are stronger, because he says, "I am quite of the same opinion. It is clear that by section 63, all that is made binding on the owners is the apportionment according to their frontage. And if a notice had been given by the appellant that he disputed the apportionment, and the matter had gone before an arbitrator, it is clear that this question of highway or no highway could not have been raised." Then Mr. Justice Archibald said, "The language of the section is quite clear. It is the apportionment only that is made conclusive and binding on the owner, assuming the liability to exist." The three Judges say that the apportionment is binding only as to the apportionment; but Mr. Justice Archibald adds, "assuming the liability to exist." Now, without taking that as a binding judgment, it is to my mind a strong authority that the learned Judges in that case construe that section as I construe it in the present case, and that the only binding and conclusive qualification of the section is as to the apportionment—that is to say, binding and conclusive as to such apportionment, the words being "such apportionment shall be binding and conclusive."

There are many parts of the Act, which makes it very improbable that it could have been intended to be binding, not only as to the apportionment, but as to the actual expenses which the local board had thought fit to spend; and also there is, to

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my mind, very grave doubt whether, if that be so, in this case there is any decision to that effect. There is a decision of the surveyor as to his apportionment; but there is no decision of the board; and no notice of demand upon him bearing upon the total amount of expenses which they say they have incurred, and which they do not even say "we have decided to be the proper expenses for these repairs," but merely expenses which they say they have incurred.

Now there are other cases which have been cited which bear perhaps more or less directly or indirectly upon the matter. There is the case of *Greece v. Hunt* (3), to which I called Mr. Charles's attention yesterday. In that case what was decided was this: "Where works are executed by a local authority for the improvement of a street, under 11 & 12 Vict. c. 63. s. 69, and 21 & 22 Vict. c. 98. s. 63, and the expenses charged upon the owners fronting the street, it is necessary, before summary proceedings can be taken for the recovery of the amount apportioned upon any such owner, that a demand of payment of the sum so apportioned should be served upon him, and the six months within which the summary proceedings must be taken"—that is, under the 11 & 12 Vict. c. 43—"are to be reckoned from such notice of demand." Now there was no notice of demand in this case until within three weeks of the time when this memorial of appeal was presented; and in a subsequent case—*Simcoa v. The Handsworth Local Board*—in which I presided in Court, where there was an earlier notice served upon the appellant, stating that their surveyor had settled that 213*l.* odd was due from the appellant in respect of his premises, and that they thereby required payment of that amount, such notice was held not to be, in fact, a notice of demand under section 257—this very section. I say there, "The notice of demand is made three months after the service of the notice, and an unnecessary demand made before this period has elapsed is immaterial." Until the third notice here given, Mr. Taylor had not had any notice of demand served upon him. He had not been called upon to pay this money. I am of opinion that that is the notice of decision in this case, and I

think the only one which has been given. I do not think the others really did amount to a decision for the purpose of this appeal. Therefore upon these two grounds—first of all, that he is undoubtedly entitled to some appeal and is not precluded by his memorial from stating the admitted grounds; secondly, from the construction of the section—I am of opinion this prohibition should not issue.

Of course, if *ex debito justitie* the party aggrieved here is entitled to the writ, I could not refuse it, however injurious I might think it to the general interest of justice; but certainly I am not sorry that we can come to the conclusion at which we have arrived, seeing that the tribunal is a valuable one—namely, that it is a tribunal having wide powers to look equitably into the matter—and it is extremely important to parties who are saddled with considerable expenses, all depending practically upon the surveyor who has to look into those expenses, and who frequently is not a very economical person, that their power of appeal should not be restricted. Upon the question whether prohibition will lie to an equitable tribunal of this kind, I entertain grave doubts, but it is not necessary that I should express any opinion.

NORTH, J.—One of the points in this case seems to me an important one—namely, the construction of the Public Health Act—and inasmuch as it may affect other cases besides the present, I will briefly state the view I take of it. The first important section is the 150th. That, read shortly, provides this, that where any street within an urban district, not being a highway repairable by the inhabitants at large, or the carriage-way, footway or any other part of such street, is not sewered, paved, &c., to the satisfaction of the urban authority, such authority may, by notice addressed to the respective owners or occupiers of the premises fronting, adjoining or abutting on such parts thereof as may require to be sewered, and so on, require them to sewer, level, pave, metal, flag, channel or make good, or to provide proper means for lighting the same within a time to be specified in such notice. Before giving that notice, certain plans are to be prepared, but that is not material for this purpose. Then follows this important part

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of the section: "If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein, and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration in manner provided by this Act, or the urban authority may by order declare the expenses so incurred to be private improvement expenses." Now, in proceeding under that section, what decision has the board to arrive at? It is only suggested in this case that there are three points, or at most four, at which any decisions are come to at all. The first is a decision said to be arrived at on notice being given of it to Mr. Taylor, the landowner, when he had notice given him in the first instance requiring him to do the work. Now is that a decision of anything? The notice recites first of all that the street is not levelled, paved, &c., to the satisfaction of the board. If there is a decision there of any sort it is simply that it is not paved, &c., to their satisfaction, and from that I do not think that any appeal could possibly lie. That is a matter which they are the persons to judge of, and if they say it is not levelled to their satisfaction, there is no possibility of any Court to which an appeal is directed saying that it was levelled to their satisfaction. Then they go on: "Whereas your premises front, adjoin or abut on certain parts of the said street, which require to be levelled, metalled, flagged, kerbed and channelled." That is not a decision at all. That is a mere statement of fact about which there could be no possible appeal. Then it proceeds: "Now, therefore, the said local board give you notice to level, pave, &c., within the space of twenty-one days from the date hereof." And then it recites in very full detail the exact nature of the works that are required to be done under that notice. But I remark, in passing, that there is nothing whatever in this notice indicating any decision by the board that they would do the work in case the owner does not do it. There is not a word about that at all. At that time, of course, they could not tell

whether they would have to do it or not. They could not tell whether the owner would do it. That is not a decision that he should do it in any sense. It is optional with him whether he should do it or not, and if he does not do it there is no penalty they can enforce against him. He cannot be compelled to do it, and the only alternative is that the board in particular cases may do it themselves if they please instead of leaving it undone. Therefore, so far as this notice goes, it seems to me not to be a notice of decision on any point whatever, unless indeed it were that the street was not levelled to the satisfaction of the board, which is not a point in respect to which anybody suggests there is an appeal. Now the next thing that happens is this, the landowner, Mr. Taylor, not having done the works, the board themselves proceed to do them, and some little time afterwards, the works having been done, the notice was given to their surveyor to which my brother Grove has referred.

Now I notice in respect to this section, that it does not give the power there to the surveyor of settling anything whatever except the proportion which each landowner is to pay out of the total. He is not to settle what works are to be done—the board is to do that; and all that he has to do is a thing which is deputed to him and not the board—namely, to settle the proportions which the owners in default, according to the frontage of their premises, are to pay. He is to settle that. Then in the notice which is given, all that he does is, in my view, what is exactly his duty under this section. In such notice there is one thing only which can be called a decision of any sort. There is no decision as to what the expenses incurred were to be; there is a mere statement of what the expenses had been, which is not a decision; but there is a decision by him of what the portion of Mr. Taylor is out of the total sum which had actually been incurred, that being, in my view, the only thing he could possibly settle.

That being the notice, the question is as to its effect under the 257th section of the Act. That section says, "where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner"—and there "set-

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tled and apportioned" means such settlement and apportionment as mentioned in the 150th section, that is to say, not settling what expenses shall be incurred, but merely settling what the proportion of that expenditure is out of the total amount—"that apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same." Now all the words in that section which I have read seem to me to indicate one thing. What the surveyor has to do is simply to settle the apportionment of the amount, and nothing else except what he has to settle is dealt with by this section at all.

That is the meaning I get from the exact words of it. But then it is said, that although that no doubt is the patent meaning of the section and the notice given under it, yet the notice given by him operates in two ways. First of all, there is the patent notice of the exact proportion Mr. Taylor has to pay; but also that there is another notice latent in that, namely, a notice that the board has arrived at the conclusion that the total expense is 375*l*. Now, I do not find any such notice of such decision contained in the notice that was delivered at all. In the next place, I do not think that the surveyor is the person on whom the duty lies of giving any such notice. It is to be given by the board. This is a notice of his having performed his duty, and he has nothing to do with giving notice on behalf of the board. Then further, I find this, that in this particular case notice is to be given by him of apportionment, and an express time for appeal is given if any party considers himself aggrieved by that notice or wishes to complain of it, namely, three months, in which he may dispute it. If it were intended that the surveyor's notice was to operate in a double way: first of all, to make it binding unless notice was given within three months, and also to operate directly by making it binding in another respect, unless notice is to be given within three weeks to a different tribunal, I do not think this section would have dealt with both those matters; but inasmuch as I

find it deals simply with an appeal by way of arbitration in case the surveyor has settled the amount wrongly, I do not think that section contemplates in any way whatever the notice being given under it which is to have the effect of bringing the commencement of the three weeks necessary for an appeal under a totally different section. It further strikes me as being improbable that the Legislature ever intended to give three weeks only to appeal on the important question of liability, and three months on the far less important question of whether the proportion was correct or not. Then further than that, the notice itself is significant to my mind, because it ends by saying, "Take notice, that the aforesaid apportionment will be binding and conclusive upon you, unless within the expiration of three months from the day of the date of this notice you shall by written notice to the urban authority dispute the same." And therefore if it was intended to operate as a notice, which would bring the three weeks' time into operation as well as the three months, I think it would be a very unfair thing to the person to whom notice was given unless his attention was called to that point. I read the notice as shewing clearly that the intention and understanding of the parties who gave it was simply to have the effect of making the time for appeal run which was given under the 257th section for three months, and was not intended in any way to affect the time of the three weeks' appeal given by section 268. As I said before, I consider that it does not amount to any notice of any decision by the board that the total amount of the expenses is 375*l*.

Further than that, there is the 268th section dealing with an appeal, which says this: "Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such to be private improvement expenses," he may address a memorial, in the way which has already been pointed out. With regard to that I do not think that there has been any decision whatever in respect of which Mr. Taylor can say he was aggrieved in this case, until the final

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notice was given to him in December requiring him to pay the aliquot part of the proportion of the 375*l*.

It seems to me, therefore, that the 257th section does not apply to this case at all, that the 268th section does apply, and that he has three weeks from the date in December when the third notice was given to him for memorialising the Local Government Board, on the ground that he was aggrieved by what had been done by the board; and the only thing I can see which could prevent his going back beyond a certain time in respect of his appeal is if it were shewn that antecedently to that notice some other notice had been given to him which did give a right of appeal within twenty-one days and no more from the service of such notice. I do not find any such notice in the present case, because as regards the only two things which have been suggested as notices—namely, the notice requiring to do the work, and the notice of the surveyor's apportionment—neither of them seems to me to be a notice coming within the proviso of the 268th section. But, assuming I am wrong in that view, and that the notice to do the work and the notice of apportionment were good notices, then the question arises whether there is now any right of appeal or not. It seems to me that there is, because the memorialist has a right where a notice is given here to complain of being aggrieved by a decision that the 252*l*. is to be paid by him or recovered from him in a summary manner. It is said that the memorial which he presented to the board does not raise that case at all; in my opinion it does. It seems to me, looking at the memorial, that even if it were to be construed strictly, it does suggest and does ask relief, on the ground that the sum he is required to pay at present (because an immediate demand for payment is made) is excessive in amount; and although I think, from the memorial, that the grounds he wishes to raise particularly, are not simply that the sum ought to be charged by way of private improvement expenses instead of a summary demand for a total sum, yet it would be perfectly open to him to say that he was aggrieved by reason of the sum being required to be paid at once instead of being spread over a

period of time. That does appear to me to be specially raised by the memorial, and to be one which would be perfectly open to him on appeal at any time to contest.

Assuming the view I have taken as to the appeal to be wrong, yet, inasmuch as there was a memorial presented, upon which Mr. Taylor can get some relief in case he makes out a case for it, it seems to me impossible that we should grant the order asked for now—namely, an order for a prohibition restraining the operation of that appeal at all.

Upon the point whether the Local Government Board is a separate body to which prohibition would go, assuming they are an inferior Court, I have not formed any opinion, and do not intend to express any. Before forming my opinion I should require to have the matter more fully argued, and should require further time to consider it.

Rule discharged with costs.

Solicitors—Torr & Co., agents for Griffith & Corbett, Cardiff, for applicants; Sharpe, Parkers & Pritchard, for Local Government Board; Ingledew & Ince, agents for Ingledew, Ince & Vachell, Cardiff, for George Taylor.

1882. } DAVIES (*appellant*) v. EVANS
March 28. } (*respondent*).

Bastardy Act (35 & 36 Vict. c. 65),
s. 4—*Order for Payment of Weekly Sum—Distress—Order of Committal—Discretion of Justices*—"May, if it shall seem fit."

Justices have discretion to refuse to enforce an order for the payment of money by the putative father to the mother of a bastard child; and are not bound to issue their warrant for distress, and in default of distress to commit the putative father. So held by GROVE, J., dissentiente HUDLESTON, B.

Case stated by the Justices of Cardigan-shire, under 20 & 21 Vict. c. 43, for the opinion of the High Court.

At the petty sessions held at Tregaron in the county of Cardigan on the 26th of August, 1873, an order in bastardy

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was made, on the application of the appellant Anne Evans, at that time a single woman, upon the respondent David Evans, the putative father of the illegitimate child of the said Anne Evans, born on the 28th of May, 1873.

The order in question, so far as is material for this case, was as follows: "We do hereby adjudge the said David Evans to be the putative father of the said bastard child; and, having regard to all the circumstances of this case, we do hereby order that the said David Evans do pay unto the said Anne Evans, the mother of the said bastard child, so long as she shall live, and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such bastard child, or to the relieving or other officer of any parish or union to which such child shall be chargeable, and in such proportion as may be appointed under the provisions of the statutes in that behalf, the sum of 2s. 6d. per week from the birth of the said child until the said child shall attain the age of thirteen years or shall die."

At a petty sessions held on the 26th of July, 1881, an information and complaint was preferred by the appellant, then a married woman and the mother of the bastard, calling upon the respondent to shew cause why he should not pay to the appellant the sum of 7l. being arrears then due from him under the above-mentioned order.

It was admitted that the amount claimed by the appellant had not been paid to her, although the respondent was able to do so; and also that the appellant, since the making of the order, had become the wife of John Davies, and that she was still living with him as his wife, and that he was able to maintain the child.

The appellant applied to us, the said Justices, for a warrant of distress against the goods of the said respondent in order to enforce payment of the said arrears, or for the commitment of the respondent to prison for such non-payment; but we, the said Justices, being of opinion that, inasmuch as the appellant had married, and the appellant's husband was able to sup-

port the said bastard child, we were not bound, under the circumstances, to enforce the said order, declined to issue such warrant of distress or to commit the said respondent to prison, and we dismissed the said information and complaint.

The question for the opinion of the Court is, whether the order of Justices must be enforced against the respondent by distress or committal to prison, as the appellant had resided with her husband and he was able to maintain the child.

Evans, with him *Willis Bund*, for the appellant.—The provisions of the Poor Law Amendment Act, 1844 (1), that an order for the maintenance or support of a bastard child should become invalid and of non-effect on the marriage of the mother, is repealed by the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65), s. 2. sched. 1; and, therefore, the order being once made the woman is entitled to it till it be satisfied, and to have that order enforced, no matter what is the position of her husband. The Justices may have a discretion as to the mode of enforcing the order, but it must be enforced; and in default of distress the only means of enforcing it is by committal.

[GROVE, J.—But imprisonment may only be ordered on default of distress, not in the first instance.]

[HUDDLESTON, B.—The words in section 5 of the Act of 1872, "no order shall be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years," are equivalent to a declaration that the order "shall be in force" till then.]

That is so, and being in force it is not competent to the Justices to exercise any

(1) 7 & 8 Vict. c. 101. s. 5: "Provided always that no order for the maintenance or support of any such bastard child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child."

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discretion as to enforcing the order. The word "may" has been held to be equivalent to "must" in the recent case of *The Queen v. Barclay* (2).

The respondent was not represented by counsel.

HUDDLESTON, B.—I think the Justices were bound to make this order, and had no discretion; and, moreover, that they are bound to proceed on the order and issue their warrant of distress, or, if necessary, to commit.

The point has, in my opinion, been already decided in the case of *Hardy v. Atherton* (3), in which the Court considered the former cases of *Southeron v. Scott* (4), *Lang v. Spicer* (5) and *Stacey v. Lintell* (6). In my judgment in *Hardy v. Atherton* (3), I held the Justices have no discretion. I came to that conclusion after fully considering what fell from my brother Lush in the case of *Stacey v. Lintell* (6), and also from my brother Field in *Southeron v. Scott* (4) on this point, and after having called the attention of my brother Field to what he was reported to have said in the latter case—which, however, he requested me to state in my judgment in *Hardy v. Atherton* (3) was not what he had intended to convey as his meaning. In the last-named case my brother Hawkins also expressed dissent from the observation of Mr. Justice Lush. I therefore think that the case of *Hardy v. Atherton* (3) is conclusive of this case. But even if it be not, the words of the statute itself shew that there is no discretion. Originally, the statute was made for the relief of the overseers of the poor, but by 7 & 8 Vict. c. 101, power of obtaining a summons against the putative father was given to the mother, and the order was given to her in relief of the burden cast on her. The provision that the

sum ordered to be paid shall be "due and payable to the mother" is still in force. The former statute of 7 & 8 Vict. c. 101 to that effect is not repealed by any later enactment. Therefore, the order made under the Bastardy Act (7 & 8 Vict. c. 101. s. 5) still is that the amount be "due and payable to the mother of the bastard child in respect of such time, and so long as she lives and is of sound mind, and is not in any gaol or prison or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two Justices" may appoint some person to have the custody of such bastard child, with power to apply for "all payments becoming due under the order." In 35 & 36 Vict. c. 65. s. 4 (7), provision is made for the enforcement of that order.

(7) 35 & 36 Vict. c. 65. s. 4: "After the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode, six days at least before the petty session, the Justices in such petty session shall hear the evidence of such woman and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other evidence to the satisfaction of the said Justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child, under the provisions of the said recited Act, of a sum of money weekly, not exceeding 5s. a week, for the maintenance and education of the child, and of the expenses incidental to the birth of such child, and of the funeral expenses of the child, provided it has died before the making of such order, and of such costs as may have been incurred in the obtaining of such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the

(2) *Ante*, 27; Law Rep. 8 Q.B. D. 306.

(3) 50 Law J. Rep. M.C. 105; Law Rep. 7 Q.B. D. 264.

(4) 50 Law J. Rep. M.C. 56; Law Rep. 6 Q.B. D. 518.

(5) 1 Mee. & W. 129; 1 Law J. Rep. M.C. 60.

(6) 48 Law J. Rep. M.C. 108; Law Rep. 4 Q.B. D. 291.

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I am of opinion that the word "may" is to be read as "must" in that part of the section which directs the Justices to commit. The cases cited have all turned on the construction of the word "may," and shew that it is to be read as "must" when from the context and circumstances

said Justices think fit, be calculated from the birth of the child; and if at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one Justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such Justice may, by warrant under his hand and seal, cause such putative father to be brought before any two Justices, and in case such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience to such order as hereinafter provided, together with the costs attending such warrant, apprehension and bringing up of such putative father, such two Justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognisance or otherwise, to the satisfaction of such Justices, for his appearance before two Justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, then any such two Justices may, if they see fit, by warrant under their hands and seals, cause such putative father to be committed to the common gaol or house of correction of the county, city, borough or place where they have jurisdiction, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied."

the Legislature evidently intended that some proceeding should take place in order to carry out the object of the legislation. Now, the object here is that the mother is to have this money subject only to her being of sound mind, not in gaol or prison, or under sentence of transportation, and this whether she be married or not—*Southeron v. Scott* (4) and *Hardy v. Atherton* (3). If the remedy for non-payment of the money be by distress or imprisonment, and the word "may" is read "must," the object of the legislation is thereby insured, which would not be so if the Justices had a discretion to refuse to issue distress or commit. To read it otherwise would involve the great hardship that the whole matter may be reopened, not only as now, on an appeal to Quarter Sessions, but on every occasion when the woman comes forward to enforce the order. For these reasons, I think the Justices are bound to issue their warrant for distress, and, in default of sufficient distress, to commit the appellant.

GROVE, J.—I am sorry not to be able to agree with my brother Huddleston in his judgment that the words in question in this case are imperative. I should have felt myself bound by the case of *Hardy v. Atherton* (3), had I considered that the point in question had been decided by that case, or was necessary to the decision of the point decided by it. But in my opinion that was not so. I agree with the decision in *Hardy v. Atherton* (3) that the right of the mother to receive the sum ordered to be paid by the putative father is unaffected by her subsequent marriage or the position and means of her husband; and that in that case the decision of the Justices was wrong, because the proviso that the marriage of the woman should disqualify her from receiving the money had been repealed. But the question before the Court in that case was not whether it was compulsory on the Justices to make or enforce the affiliation order, but whether an order made on a single woman before the marriage could be enforced afterwards. And my brother Hawkins, in alluding to the remark of Mr. Justice Field in *Southeron v. Scott* (4)—"It may or may not be the case that the Justices have a discretion, upon the hearing of a summons

Davies v. Evans.

against the putative father to enforce payment, to take into account the means of the woman's husband when they are shewn to be sufficient to maintain the child"—expressly says that he does not understand those remarks to intimate any hostile opinion to that at which he had arrived. Now, I have no doubt the order can be enforced. If I were asked what ought the Justices to do, I might say, "make the order," or "make further enquiries as to the wishes of the mother's husband and the conduct of his wife," &c. But we are not so asked. In my opinion, it would be a great hardship if this word were here held to be imperative. Suppose an order made against a man not really the father, as subsequent events or disclosures proved, are the Justices bound to enforce the order nevertheless? I cannot say I so read the statute, and to do so would, to my mind, be straining it. It is a dangerous thing to give a different interpretation to words having an ordinary meaning because general justice, apart from particular cases, may, perhaps, be thereby obtained if thereby that construction would be in favour, not of the person on whom a charge is laid, but of a person in whose favour the charge is created. For Mr. Justice Field correctly lays down the rule in *The Queen v. Barclay* (2):—"It is a very well established rule for the construction of statutes that if they impose a charge on the subject they must be strictly construed as against the party in whose favour the charge is imposed." Now, in this case, the charge is imposed in favour of the mother, and yet I am asked to construe the statute strictly in her favour and against the putative father. The word "may" in its ordinary sense is permissive, as distinguished from the undoubtedly imperative "shall." In section 3, the word "shall" is used, and also in section 4 we find it enacted that the Justices "shall hear the evidence of such woman," and "shall also hear any evidence tendered by, or on behalf, of the person alleged to be the father." That is, it is imperative on them as Justices to hear the evidence; and then it goes on, if the evidence of the mother be corroborated, they "may adjudge the man to be the putative father of such bastard child"; but that is permissive, not imperative, because

they may disbelieve the evidence of the woman. Then the section proceeds, and "they may also, if they see fit, . . . proceed to make an order on the putative father . . . to pay a weekly sum" It is not contended that this is not discretionary. Then again it is provided that such weekly payment may, if the Justices think fit, be calculated from the birth of the child. Why, then, should the following clause (7) be read as if "may" were equivalent to "must," when it is agreed that it is used in its permissive sense three times previously in the same section, when, moreover, the word "shall" is used also in the same section? The object of the enactment is not to punish the man in the first instance, but to secure the money to the woman; and the punishment by way of committal is for disobedience to the order in not paying the money. Here, therefore, I think it is clearly permissive, and shall so hold in the absence of any direct authority to the contrary. If it were necessary to ground my decision on any further consideration, I think that it is highly desirable that the Justices should have a discretion in this matter of committal as well as in the foregoing matters, but I do not think I am at liberty to construe any statute according to my own ideas of what is desirable. I understand the question submitted to us to be, "Have the Justices any discretion, not merely in this case, but at all"? I think they have.

Willis Bund applied for leave to appeal.

GROVE, J.—We have no power to grant it, this being a criminal case.

The Court differing in opinion, the questions of the Justices remain unanswered.

Solicitors—Morgan & Gilks, agents for Charles Millard, Lampeter, for appellant.

1881. { THE QUEEN v. HANDSLEY AND
Dec. 7. { OTHERS, JUSTICES OF THE
BOROUGH OF BURNLEY; *ex*
parte KING.

Justices—Jurisdiction of—Interest or Bias—Town Council—Penalties—Borough Fund.

An officer of a corporation applied, at his own discretion in the execution of his duty, for a summons against a ratepayer in arrears for non-payment of the borough rate. On the hearing the magistrates refused to adjudicate and dismissed the summons on the ground that one of the magistrates present at the hearing was disqualified by reason of his being a member of the town council. By a section of the local Act, similar in its terms to section 258 of the Public Health Act, 1875, provision is made that "any person shall not be disqualified or disabled to act as Justice of the peace in any matter arising under or in violation of this Act, by reason of his being . . . a member of the council or of any committee thereof":—Held, that the Justices ought to have adjudicated on the summons, as, to disqualify a magistrate, it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter.

The Queen v. Gibbons (Law Rep. 6 Q.B. D. 168) dissented from. The Queen v. Milledge (48 Law J. Rep. M.C. 139; Law Rep. 4 Q.B. D. 332) commented on.

In this case a rule *nisi* had been obtained, calling on the Justices of Burnley to shew cause why they should not hear and adjudicate upon a summons obtained by one King against an inhabitant of the borough for non-payment of the borough rate. King was the officer of the borough whose duty it was, at his own discretion, to apply for summonses against ratepayers in arrear. In this instance King did so apply to a magistrate, who was not a member of the town council, but the summons came on for hearing before a bench of magistrates, one of whom was a member of the town council, who refused when requested to withdraw, and the magistrates thereupon declined to adjudicate upon the summons, on the ground that the said

magistrate, being a member of the town council, was disqualified. By a local Act it was provided by section 502, that, "except as expressly otherwise provided, any person shall not be disqualified or disabled to act as Justice of the peace in any matter arising under or in violation of this Act, by reason of his being a ratepayer in the borough or liable to any payments under this Act, or a member of the council or of any committee thereof."

It was also provided that half the penalty for non-payment of a rate should go to the borough fund.

Sir H. Giffard shewed cause.—Section 502 of the local Act is admittedly in the same terms as the Public Health Act, s. 258 (1), on which there have been decisions. *The Queen v. Milledge* (2), *The Queen v. Meyer* (3) and *The Queen v. Gibbons* (4) shew that in this case the corporation being by their officer the real prosecutors, the section does not empower any town councillor to act.

Channell, in support.—In *The Queen v. Milledge* (2) the Court could have got over the fact that some of the magistrates who heard the summons against the defendant were members of the corporation, who ordered the prosecution, if they had not taken an active part. The mere fact of one of the magistrates being a member of a body the recipient in part of the penalty is not sufficient, unless he takes an active part in the proceedings. The case of *The Queen v. White* (5), though not reported on this point, involved it, and in fact it was taken in the Court below, and stated in the case. *The Queen v. Gibbons* (4), which is against this contention, was

(1) 38 & 39 Vict. c. 55. s. 258: "No Justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority or by reason of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with others to contribute to or to be benefited by any rate or fund out of which any expenses incurred by such authority are under this Act to be defrayed."

(2) 48 Law J. Rep. M.C. 139; Law Rep. 4 Q.B. D. 332.

(3) Law Rep. 1 Q.B. D. 173.

(4) Ibid. 6 Q.B. D. 168.

(5) 49 Law J. Rep. M.C. 19; Law Rep. 5 Q.B. D. 15.

The Queen v. Handsley.

decided without the attention of the Court being drawn to the true meaning of *The Queen v. Milledge* (2).

The considered judgment of the Court was (on Dec. 20) read by

FIELD, J.—In this case a rule was obtained calling upon the defendants to shew cause why they should not hear and adjudicate upon a summons obtained by one King against an inhabitant of the borough for non-payment of the borough rate. It appears that King, who is an officer of the corporation, is charged with the duty of collecting the borough rate, and in the discharge of such duty applies for summonses against ratepayers who are in arrear. In so doing King exercises his own discretion, and acts without consulting the town council, or any committee or member thereof. In the present case King had obtained a summons from a Justice who was not a member of the town council; but on the hearing the magistrates refused to adjudicate, and dismissed the summons, on the ground that one of the sitting magistrates, being a town councillor, was thereby disqualified from adjudicating upon the summons.

By section 502 of the local Act, which is similar in its terms to section 258 of the Public Health Act, 1875 (1), it is enacted that "except as expressly otherwise provided, any person shall not be disqualified or disabled to act as Justice of the peace, in any matter arising under or in violation of this Act, by reason of his being a ratepayer in the borough, or liable to any payments under this Act, or a member of the council or of any committee thereof."

The levying, collection or enforcement of the borough rate in Burnley is governed by the local Act.

For the Crown it was contended, that this section authorised the Justice in question to act, although he was a member of the town council.

For the defendants it was submitted, that the section in question does not empower any town councillor to act in cases in which the corporation are themselves the prosecutors, and that in this case the corporation are in fact, by their officer, the prosecutors; and the cases of *The Queen v. Milledge* (2), *The Queen v. Gib-*

bons (4) and *The Queen v. Meyer* (3) were cited in support of this contention.

In *The Queen v. Milledge* (2) complaint had been made to the Local Government Board of a nuisance arising from a piece of water in Weymouth, and the board thereupon required the town council of Weymouth to abate the nuisance. The town council passed a resolution that steps should be taken against the owner of the water for the abatement of the nuisance. Two Justices of the borough, who were members of the town council, and who had taken an active part in discussions on the question, were with the other magistrates on the bench of Justices, when the summons against the owner of the water came on for hearing. They refused to retire, although the defendant objected to their sitting, on the ground that they were the prosecutors. The defence was that the nuisance was caused by the town council themselves sending the drainage of the town into the water complained of. The defendant was convicted by a majority of five to two, the Justices in question voting in the majority, and it was held that under these circumstances they were disqualified from voting. It is obvious that in this case the Justices were substantially interested in the proceeding adjudicated upon, so as to be likely to have a real bias in the matter. *The Queen v. Meyer* (3) is a similar case, and the decision there is put on that very ground, and it is pointed out that the interest, where not pecuniary, must be substantial, so as to make it likely that the Justice has a real bias, and that the mere possibility of bias is not sufficient to disqualify. In *The Queen v. The Justices of Huntingdonshire* (6) it was held, in accordance with this distinction, that Justices who were members of the town council of a borough, and as such had taken an active part in the making of an order under the Dogs' Act, 1871, were not thereby disqualified from sitting to hear a complaint of non-observance of the order. In *The Queen v. Gibbons* (4), by a local Act for the improvement of a borough, the corporation was made the authority for the execution of the Act, with power to direct prosecutions for this

(6) Law Rep. 4 Q.B. D. 522.

The Queen v. Handsley.

purpose. An information for an offence under this Act having been preferred by an officer on behalf of the corporation, a summons was issued upon it by a Justice, who was an alderman and member of the corporation, but such summons came on for hearing before Justices none of whom were connected with the corporation. The Court, however, held that such Justices could not adjudicate upon the summons, because it had been issued by one who was virtually prosecutor. The case of *The Queen v. Meyer* (3) was not cited then, and the Court does not advert to the distinction established by that case between a substantial interest likely to cause a real bias and the mere possibility of a bias. Still we might have felt ourselves bound by the decision in that case, had it not been that in *The Queen v. White* (5), reported, but not on this point, the same question arose, and was decided the other way. Feeling ourselves thus at liberty to exercise our own judgment in the matter, we are of opinion that in cases like the present, when such a section as section 502 of this local Act exists, it is not enough to shew merely that an adjudicating Justice is a member of the town council, and as such has a pecuniary interest in the result of the complaint or information, or that he is a member of the corporation which is charged with the duty of prosecuting the offence which he sits to adjudicate upon, but that, in order to disqualify the Justice, it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. In our opinion there is in this case no ground whatever for saying that there was any such substantial interest or likelihood of real bias, and consequently the rule must be made absolute.

Rule absolute with costs.

Solicitors—The Solicitor to the Treasury, for the Crown; Milne, Riddle & Mellor, agents for Creeke & Sandy, Burnley, for prosecution; Warriner & Cross, agents for John Knowles, Burnley, for defendants.

1882. }
March 7. }

HANCE v. FAIRHURST.

Elementary Education Act, 1876, ss. 11 and 12—Attendance—Order on Father—Enforcement on Mother—39 & 40 Vict. c. 79.

An attendance order, made on the father of a child under section 11 of the Elementary Education Act, 1876, cannot, on the death of the father, be enforced against the mother, under section 12.

CASE stated by the borough Justices of the city of Liverpool, under the Summary Jurisdiction Act, 1876 (39 & 40 Vict. c. 79).

In December, 1880, George Fairhurst was summoned for that, after due warning given to him as the parent of Albert Fairhurst, a child between the ages of five and fourteen, the said child was found to be not under proper control, contrary to the provisions of the Elementary Education Act, 1876.

George Fairhurst appeared to the summons by his wife, the above respondent, and after hearing the case, an order was made by the Court, under section 11 of that Act (1), by which the child was ordered to attend for one year St. Silas' School, a certified school selected by George Fairhurst; and a copy of the order was served on George Fairhurst.

In February, 1881, the attendance order having been disobeyed, without any reasonable excuse, another summons was taken out against George Fairhurst, under the 12th section of the Act (2).

(1) By the Elementary Education Act, 1876, section 11, it is enacted that if any child is found not under proper control, "it shall be the duty of the local authority, after due warning to the parent of such child, to complain to a Court of Summary Jurisdiction, and such Court may, if satisfied of the truth of such complaint, order that the child do attend some certified efficient school willing to receive him, and named in the order, being either such as the parent may select, or if he do not select any, then such public elementary school as the Court think expedient"

(2) By section 12: "Where an attendance order is not complied with, without any reasonable excuse within the meaning of this Act, a Court of Summary Jurisdiction, on complaint

Hance v. Fairhurst.

George Fairhurst again appeared to the summons by his wife, and was fined five shillings, under section 12 of the Act (2).

In June, 1881, George Fairhurst died, and the respondent thenceforward became liable to maintain and had the actual custody of the child.

On the 26th of September, 1881, the order having since been continually disobeyed, without reasonable excuse, a summons was taken out by the appellant, the clerk to the School Board, calling on the respondent to appear and be dealt with under the provisions of section 12.

The Justices were of opinion that the respondent was not liable to be dealt with under section 12, and dismissed the complaint.

Arthur Charles, for the appellant.—The Justices ought to have convicted. By the Elementary Education Act (33 & 34 Vict. c. 75), s. 3, the term "parent" includes guardian, and every person who is liable to maintain, or has the actual custody of any child. The child had passed into the custody of a parent who was cognisant of the existing order, and whose duty it was to see that order carried out. There is no necessity to commence the proceedings *de novo* on the death of the parents on whom the order was made. It has been decided that proceedings under the Elementary Education Acts may be taken against a married woman who has the actual custody of the children during the temporary absence of her husband in pursuance of his ordinary calling as a sailor—*Hance v. Burnett* (3).

made by the local authority, may, if it think fit, order as follows:—

"(i.) In the first case of non-compliance, if the parent of the child does not appear, or appears and fails to satisfy the Court that he has used all reasonable efforts to enforce compliance with the order, the Court may impose a penalty not exceeding with costs five shillings

"(ii.) In the second or any subsequent case of non-compliance with the order the Court may order the child to be sent to a certified day industrial school . . . and may further in its discretion inflict any such penalty as aforesaid, or it may for each such non-compliance inflict any such penalty as aforesaid, without ordering the child to be sent to an industrial school."

(3) 43 Justice of the Peace, 54.

[FIELD, J.—Supposing the mother had been abroad, and had known nothing about the attendance orders. Could it be intended that on the death of the father she could on returning and undertaking the custody of the child be committed to prison for non-compliance with the order?]

The mother would have the opportunity under section 12 of offering a defence to the summons, and a penalty could not be inflicted except in the absence of reasonable excuse.

The respondent did not appear.

FIELD, J.—I am clearly of opinion that the Justices came to a right determination. These are useful Acts, and every facility for carrying them out should be afforded; but, on the other hand, it would not be right to punish A because B had failed to comply with an order.

BOWEN, J., concurred.

Appeal dismissed.

Solicitors—Gregory & Co., for appellant.

1881. } *In re CLEW.*
Dec. 16. }

Licensing Acts (35 & 36 Vict. c. 94), s. 3 and s. 51 (sub-s. 2)—*Punishment for Selling Liquors without Licence—Alternative Penalties—"Or"—Summary Jurisdiction Act*, 1879, s. 21.

Section 3 of the Licensing Act, 1872, subjecting a person convicted of selling intoxicating liquors without a licence "for a first offence to a penalty not exceeding 50l., or to imprisonment with or without hard labour for a term not exceeding one month," authorises either an adjudication to pay a fine, or an adjudication of imprisonment, but does not authorise the adjudication of a fine, with imprisonment in default of payment.

Rule for *habeas corpus* to the Justices of Sussex and the Governor of Lewes Gaol to bring up Elizabeth Evans Clew, and to shew cause why she should not be discharged.

On the 31st of October, 1881, the prisoner was convicted under the In-

In re Clow.

intoxicating Liquors Licensing Act, 1872, section 3, for selling liquors without a licence. The conviction adjudged that "the defendant do for her said offence forfeit and pay the sum of 12*l.* and 10*s.*, and do so also pay 1*l.* 6*s.* 6*d.* for costs. And it is ordered that the said sums be paid forthwith, and if default is made in payment according to this adjudication and order, it is adjudged that the defendant be imprisoned in Her Majesty's prison at Lewes and there kept to hard labour for the space of one calendar month, or until the said sums, and all costs and charges, are paid." The sums adjudicated were not paid, and on the 5th of December the Justices issued a warrant of commitment, in virtue of which the prisoner was in custody. No warrant of distress was issued. The affidavits stated that the solicitor who represented the prisoner at the time of the conviction informed the Justices that she was a married woman, and that all the goods in the house which she occupied were her husband's.

By section 3 of the Intoxicating Liquors Licensing Act, 1872 (35 & 36 Vict. c. 94), any person convicted of selling intoxicating liquors without a licence is "for the first offence liable to a penalty not exceeding 50*l.*, or to imprisonment with or without hard labour for a term not exceeding one month."

Grain shewed cause.—The conviction is good under the section. The imprisonment there referred to is the alternative for not paying the fine mentioned. It is not an alternative punishment. The commitment is also good in virtue of section 21, sub-section 3, of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), which provides that "where a person is adjudged by the conviction of a Court of summary jurisdiction . . . to pay any sum of money, and on default of payment of such sum a warrant of distress is authorised to be issued, and it appears to the Court that such person has no goods whereon to levy the distress, . . . such Court instead of issuing such warrant of distress may, if it think fit, order the said person on non-payment of the said sum to be imprisoned for any period not exceeding the period for which he is liable under the conviction to

be imprisoned in default of distress." The conviction is in the form prescribed by Schedule I. Form 2 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43).

[BOWEN, J.—Had the defendant notice of the application for the warrant of commitment?]

No. None was necessary.

Lockwood, in support of the rule, argued that the punishment under the section in question is alternative. The Justices must give the one or the other on convicting. He referred to *In re Brown* (1).

GROVE, J.—I am of opinion that this conviction is bad. The error has arisen from the Justices or their clerk having used a printed form which is as given in the schedule to the Summary Jurisdiction Act, 1848, but which is not applicable to section 3 of the Intoxicating Liquors Licensing Act, 1872. The words of that section are clear. The penalty which may be imposed is either fine or imprisonment—not a fine, or in default of payment of the fine then a term of imprisonment. "For the first offence," it is enacted, "he shall be liable to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a term not exceeding one month." Does the word "or" mean "in default of paying the fine." I think not. When the Legislature means to impose imprisonment in default of paying a fine it so expresses itself. I was somewhat embarrassed to know how the fine was to be enforced otherwise than under the Summary Jurisdiction Acts, unless there was an order in the conviction for imprisonment in default, but I find this is provided for by section 51 of the Licensing Act, 1872. The 2nd sub-section provides that "where the Court of summary jurisdiction orders that a distress shall be made in default of payment . . . the Court may order that in default of the said sum being paid as directed the person liable to pay the same shall be imprisoned" according to a prescribed scale. After the conviction the Court may order a distress to issue, and after that (the language of the section is rather curious), "in default of the said sum being paid," the person

(1) 47 Law J. Rep. M.C. 108; Law Rep. 3 Q.B. D. 545.

In re Clew.

may be imprisoned. Non-payment must mean non-realisation of distress. The penalty may be enforced by distress, and afterwards by imprisonment. But imprisonment is a subsequent step to be taken, after various other things have happened. If the conviction had ended with the word "forthwith," the Justices might then have proceeded under section 51, but they have no power to order imprisonment until section 51 is exhausted. I need not discuss whether they might have dispensed with the warrant of distress; they must first ascertain whether there is sufficient distress, as the Act does not say that on simple default the person can be sent to prison. Section 21 of the Summary Jurisdiction Act, 1879, applies to cases in which the Justices have convicted in the form mentioned in the section, but not to this case.

LOPES, J.—I am of the same opinion. I think it clear that this conviction must be quashed. The Justices had power either

to fine or imprison. The power is alternative, and there is no power to imprison under that section in default of distress. The Justices have ordered the defendant to be imprisoned in default of the payment of a fine, and have exceeded their power. The Summary Jurisdiction Act, 1879, s. 21, sub-s. 3, has no application to the case. It applies only to cases in which the Justices have imposed a conviction of the kind therein referred to.

BOWEN, J.—I am of the same opinion and for the same reasons. I think, further, that it is a question worth considering whether a man can be sent to prison in default of distress without having been heard.

Rule absolute.

Solicitors—Sole, Turner & Knight, agents for Cripps & Co., Tunbridge Wells, for prosecutor; Hasties, agents for Hasties, East Grinstead, for Justices.

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Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13. sub-s. 3: removal of property with intent to defraud creditors: fraud on single creditor]—The provisions of section 13 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 13.

sub-s. 3, apply to all persons whether subject to the bankruptcy laws or not. *Reg. v. Rowlands*, C.C.R., 51

A, B and C were convicted on an indictment, under section 13, sub-section 3 of 32 & 33 Vict. c. 62, of removing the property of A, since the date of an unsatisfied judgment or order for the payment of money against A, with intent to defraud the creditors of A. It was proved that a judgment had been obtained against A, and that while it was still unsatisfied, he, with the help of B and C, removed property from his house in order to defeat the judgment creditor. There was no evidence that A had any other creditors, or that there was any intention to defeat the claims of any other creditors of A, except the said judgment creditor. No petition in bankruptcy had been presented against A, nor had any proceedings been taken for the arrangement of his affairs by liquidation or composition:—*Held*, that the absence of any proceedings in bankruptcy against A was immaterial; but that the conviction could not be sustained, inasmuch as an intent to defraud creditors was charged but was not proved. *Ibid*.

Semble that an intent to defraud one creditor may be evidence from which a jury may infer an intent to defraud all, within the meaning of section 13. *Ibid*.

Distress. See BASTARDY.

Elementary Education—jurisdiction of justices over offences under by-laws: attendance order: petty sessional district comprising parts of several counties: union extending into several distinct jurisdictions: 30 & 31 Vict. c. 106 (*Poor Law Amendment Act*, 1867), s. 27; 39 & 40 Vict. c. 79 (*Elementary Education Act*, 1876), ss. 12 and 34—By section 34 of the Elementary Education Act, 1876, it is enacted that "all enactments relating to guardians and their officers and expenses and to relief given by guardians shall, subject to the express provisions of this Act, apply as if the guardians, including the School Attendance Committee appointed by them and their officers acting under this Act, and expenses incurred and money paid for school fees and relief given under this Act, were respectively acting, incurred and paid and given as relief under the Acts relating to the relief of the poor, and the Local Government Board may make rules, orders and regulations accordingly." Therefore, in cases where a union extends into several distinct jurisdictions, as specified in 30 & 31 Vict. c. 106, s. 27 (*Poor Law Amendment Act*, 1867), Justices of any of the counties forming such jurisdictions are enabled to hear and determine applications against parents for non-compliance with attendance orders or for other breaches of the by-laws under the Elementary Education

Acts. Reg. v. Eaton, Justices of the County of Northampton, 31

— 39 & 40 Vict. c. 79, ss. 11 and 12: *attendance: order on father: enforcement on mother*—An attendance order, made on the father of a child under section 11 of the Elementary Education Act, 1876, cannot, on the death of the father, be enforced against the mother, under section 12. *Hanco v. Fairhurst*, 139

— (33 & 34 Vict. c. 75, s. 74), 1873 (36 & 37 Vict. c. 86), 1876 (39 & 40 Vict. c. 79), 1880 (43 & 44 Vict. c. 23): *causing a child to attend school: reasonable excuse*—The respondent, an engine driver, was summoned for not causing his child to be sent to school in accordance with the by-laws made under 33 & 34 Vict. c. 75, s. 74, and in force in the district. By-law 2 provided as follows: The parent of every child of not less than five nor more than thirteen years of age, shall cause such child to attend school unless there be a reasonable excuse for non-attendance. Any of the following reasons shall be a reasonable excuse—First, that the child is under sufficient instruction in some other manner; secondly, that the child has been prevented from attending school by sickness or an unavoidable cause; thirdly, that there is no public elementary school open which the child can attend within two miles. At the hearing of the summons it was proved that the child had invariably been sent from home in proper time; that on two occasions only, out of a possible 158 attendances, had the respondent been informed that the child had arrived too late, and that on both those occasions the respondent's wife had corrected the child. The magistrates having held on the above facts that the respondent had a reasonable excuse for not causing his child to be sent to school,—*Held*, that the magistrates were justified in so holding. *The School Board Attendance Committee of Belper Union v. Bailey*, 91

— 33 & 34 Vict. c. 75, ss. 60 and 74: 39 & 40 Vict. c. 79, s. 32: *contributory districts: school attendance committee of a union: parish not under any other local authority*—The guardians of a union comprising the parish of C. S. which had no school board of its own, but by order of the Education Department under the Elementary Education Act, 1870, s. 49, contributed to the schools of a district which had a school board, appointed a school attendance committee under the Elementary Education Act, 1876, ss. 7 and 32, for C. S. and certain other parishes within the union, and under section 31 claimed from C. S. a proportion of the expenses of the committee:—*Held*, that C. S. was, within the meaning of section 32, "a parish . . . not under any . . . local authority within the meaning

of the Act," and that, therefore, the committee had power to act for C. S., and C. S. must pay a proportion of the expenses of the committee. *Reg. v. Vane; in re The Guardians of Penrith Union v. The Overseers of Castle Sowerby*, 114

Evidence. See **MANSLAUGHTER**.

Fishery—fishing without licence: fresh water fisheries act, 1878 (41 & 42 Vict. c. 39), s. 7: Severn fishery district: certificate of secretary of state: tributary—By certificate of the Secretary of State, the Severn Fishery District was defined to be "so much of the river Severn and of the rivers V. and T., and of all other tributaries of the said river Severn as is situate within the counties of Gloucester, &c." The rivers V. and T. flow directly into the Severn. Licences are required for fishing in the Severn Fishery District. On information against the respondents for fishing without a licence in a brook which was a tributary of a tributary of the river T.,—*Held*, that the Justices were right in dismissing the information, because the certificate only included in the district direct tributaries of the Severn, which this brook was not. *Merricks v. Cadwallador*, 20

— See **JUSTICES**.

Forfeiture. See **METROPOLIS MANAGEMENT ACT**.

Fraud—by agent: solicitor entrusted with property for safe custody: 24 & 25 Vict. c. 96, s. 76—The defendant, a solicitor, having been entrusted with money to invest on mortgages, fraudulently misappropriated it to his own use:—*Held*, that the money so entrusted to the defendant, was not property entrusted to him for "safe custody" within the meaning of section 76 of 24 & 25 Vict. c. 96. *Reg. v. Newman*, C.C.R., 87

Grievous Bodily Harm—maliciously inflicting: 24 & 25 Vict. c. 100, s. 20—The prisoner was indicted, under 24 & 25 Vict. c. 100, s. 20, for unlawfully and maliciously inflicting grievous bodily harm, and was convicted. Shortly before the conclusion of a performance at a theatre, the prisoner put out the gaslights on a staircase which the audience had to descend to leave the theatre, and placed an iron bar across a doorway through which they had to pass. The darkness caused a panic amongst the audience leaving the theatre, and several of them were seriously injured through the pressure of the crowd in the obstructed doorway:—*Held*, that the conviction was right. *Reg. v. Martin* (C.C.R.), 36

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Herbage. See **MALICIOUS INJURIES**.

Highway—highways and locomotives amendment act, 1878 (41 & 42 Vict. c. 77), s. 23: excessive weight and extraordinary traffic: carting building materials—Upon the hearing of a complaint made by a highway board under section 23 of the Highways and Locomotives Amendment Act, 1878, for the purpose of recovering from the respondent extraordinary expenses incurred by the board by reason of traffic conducted by the respondent, it appeared that the respondent, for a period of seven months, almost daily carted along a road which was ordinarily used for light agricultural traffic large quantities of bricks, stone, lime, sand, timber and other building materials, for the purpose of constructing a dwelling-house and out-buildings. The weight of the load was so great as to necessitate the use of trails in going down hill; these trails were not required for the ordinary traffic, and the use of them caused part of the damage complained of. The Justices having found that the appellants were not entitled to recover the extra expense to which they had thereby been put,—*Held*, that they were warranted in finding that the weight was not excessive nor the traffic extraordinary within the meaning of the Act. *Pickering Highway Board v. Barry*, 17

Per LOPES, J.: Excessive weight and extraordinary traffic to be within the Act must mean something excessive in weight or extraordinary in kind of traffic, either as compared with what is usually carried over roads of the same nature in the neighbourhood, or as compared with that to which the road in its ordinary and fair use may reasonably be subjected. It would not be sufficient to compare the weight and traffic complained of with the traffic usually carried on the particular road. *Ibid*.

— **highways and locomotives amendment act 1878, ss. 23 and 36: limitation of summary proceedings: certificate of surveyor**—The six months within which summary proceedings under section 23 of the Highways and Locomotives Act, 1878, may be taken for recovery of expenses incurred by a highway authority, by reason of damage to the highway caused by excessive weight or extraordinary traffic thereon, are to be computed from the certificate of the surveyor. *Pool and Fording Highway Board v. Gunning*, 49

— **liability to repair: main road: portion of a road ceasing to be a turnpike road: 41 & 42 Vict. c. 77, s. 13**—The Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), enacts, by section 13, that any road which has since 1870 ceased to be a turnpike road shall be deemed a main road, and that half the expenses of maintaining such a road

shall, after the 29th of September, 1878, be borne by the county authority. Certain roads, formerly turnpike roads, ceased after 1870 to be such, through the enlargement of the area of the borough of R., by which portions of such roads were taken out of the turnpike trust and included within the borough. By 10 & 11 Vict. c. 34 the corporation, as the highway authority of the borough, became liable for the repair of all highways within the borough, and the turnpike trustees were precluded from levying tolls or spending money on any road within the borough. The corporation claimed to recover from the county authority half of the expenses of maintaining such portions of the roads as had become included in the enlarged area of the borough:—*Held* (reversing the judgment of the Queen's Bench Division), that the claim must be allowed, inasmuch as those portions of the roads which were so included had ceased to be turnpike roads, and had become main roads, and that the provisions of section 13 of 41 & 42 Vict. c. 77 consequently applied to them. *The Mayor, &c., of Rochdale v. The Justices of Lancashire* (App.), 1

Husband and Wife. See POOR.

Indictment. See GRIEVOUS BODILY HARM.

Interest. See JUSTICES.

Intoxicating Liquor. See LICENSING ACT.

Judex in sua causa. See JUSTICES.

Jurisdiction. See JUSTICES.

Justices—*bias: judex in sua causa: special assessment sessions*—Where a Justice, being an appellant against his assessment to rates by the Assessment Committee in respect of a house which he owns and occupies, takes part at the special sessions in reducing the assessment of other appellants similarly situated, and on his leaving the bench the other Justices reduce his assessment, and other assessments are reduced in the same way, the orders made are subject to bias, and may be brought up to be quashed on *certiorari*. *Reg. v. The Great Yarmouth Justices*, 39

—*jurisdiction of: reasonable claim of right: tidal river: fishery*—A mere claim by a man of a right to fish as one of the public, supported by very slight evidence, is not such a reasonable claim as will oust the jurisdiction of the justices. A river is a tidal river in such parts only as are within the regular ebb and flow of the highest tides. *Roece v. Miller*, 64

—*jurisdiction of: interest or bias: town council: penalties: borough fund*—An officer of a corporation applied, at his own discretion in the execution of his duty, for a summons against a ratepayer in arrears for non-payment of the borough rate. On the hearing the magistrates refused to adjudge, and dismissed the summons on the ground that one of the magistrates present at the hearing was disqualified by reason of his being a member of the town council. By a section of the local Act, similar in its terms to section 258 of the Public Health Act, 1875, provision is made that "any person shall not be disqualified or disabled to act as Justice of the peace in any matter arising under or in violation of this Act, by reason of his being . . . a member of the council or of any committee thereof":—*Held*, that the Justices ought to have adjudicated on the summons, as, to disqualify a magistrate, it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. *Reg. v. Handsley, Justices of the Borough of Burnley; ex parte King*, 137 *The Queen v. Gibbons* (Law Rep. 6 Q.B. D. 168) dissented from. *The Queen v. Milledge* (48 Law J. Rep. M.C. 139; Law Rep. 4 Q.B. D. 332) commented on. *Ibid.*

— Discretion of. See BASTARDY.

— See ELEMENTARY EDUCATION.

Licensing Acts—*intoxicating liquors, sale of: Sunday closing (Wales) act, 1881 (44 & 45 Vict. c. 61), s. 3: time of commencement of act: construction*—Section 3 of the Sunday Closing (Wales) Act, 1881, provides that the Act "shall come into operation in each division or place in Wales on the day next appointed for the holding of the general annual licensing meeting for that division or place." The Act received the royal assent on the 27th of August, 1881. The general annual licensing meeting for S. was held on the 8th of September, the date having been fixed, in accordance with 9 Geo. 4. c. 61. s. 2, three weeks previously. Appellant was convicted for the sale of liquor on the 11th of September, being a Sunday:—*Held*, that the conviction was wrong, as the Act would come into operation in each division only on the day which after the passing of the Act should be next appointed for holding the general annual licensing meeting. *Richards v. MacBride*, 15

— (35 & 36 Vict. c. 94), s. 3: *sale of intoxicating liquor by retail without licence: club*—A member of an ordinary club, acting on his rights as a member, obtained from the club, on payment, some beer and spirits:—*Held*, that this was not a sale by

retail of intoxicating liquor within the meaning of the Licensing Act, 1872 s. 3. *Graff v. Evans*, 25

— (35 & 36 Vict. c. 94), ss. 3 and 51 (sub-s. 2): *punishment for selling liquors without licence: alternative penalties: "or": summary jurisdiction act, 1879, s. 21*—Section 3 of the Licensing Acts, 1872, subjecting a person convicted of selling intoxicating liquors without a licence "for a first offence to a penalty not exceeding 50*l.*, or to imprisonment with or without hard labour for a term not exceeding one month," authorises either an adjudication to pay a fine, or an adjudication of imprisonment, but does not authorise the adjudication of a fine, with imprisonment in default of payment. *In re Clow*, 140

Limitation. See HIGHWAYS.

Local Authority. See ELEMENTARY EDUCATION ACT.

Local Government Board. See PUBLIC HEALTH.

Locomotives. See HIGHWAYS.

Malignant Injuries to Property Act (24 & 25 Vict. c. 97), s. 52: damage to right of herbage: real and personal property: information: prosecutor: ownership—The respondent was charged, upon an information laid under 24 & 25 Vict. c. 97, s. 52, with having committed wilful damage to certain herbage growing on the Town Moor at Newcastle, the property of the stewards and wardens of the freemen. It was proved that damage to the amount of one penny had been committed by playing at bowls on the herbage growing on the moor, the fee-simple of which was vested in the corporation of Newcastle, subject to certain rights of herbage on the part of the freemen, whose interests the stewards and wardens were, by Act of Parliament, appointed to preserve:—*Held*, that a right to herbage was not "real or personal property" within the meaning of 24 & 25 Vict. c. 97, s. 52, which was intended to apply to actual physical damage done to something tangible and visible, as distinguished from a mere legal right. *Held* also (*per* GROVE, J.), that even if the herbage right in question was property within section 52, the ownership of the property should have been laid in the corporation, and not in the persons mentioned in the information. *Laves v. Etringham*, 13

Manslaughter—evidence: neglect of parent to procure medical aid for child: absence of proof that death was thereby accelerated—If a parent neglects to provide medical aid for

his child of tender years, and the child dies, the parent cannot be convicted of manslaughter unless it is proved affirmatively that the death was caused or accelerated by such neglect; and medical evidence on behalf of the prosecution, that the child's life probably might have been prolonged or saved by the parent calling in medical aid, is not sufficient evidence to support a conviction. *Reg. v. Morby*, C.C.R., 85

Market. See POOR-RATES.

Metropolis Management Act—new street: width and openings: street open at only one end: metropolis management amendment act, 1862 (25 & 26 Vict. c. 102), s. 98—Without the consent of the Metropolitan Board of Works, a street was laid out within the metropolis which was open only at one end:—*Held*, that the Metropolis Management Amendment Act, 1862 (25 & 26 Vict. c. 102), s. 98 (enacting that no new street shall be laid out unless of the width there specified, "or unless such street shall be open at both ends"), requires the street to be both of the specified width and open at both ends, and therefore that the proposed street, although of the specific width, was contrary to the Act. *The Metropolitan Board of Works v. Stead*, 22

— 18 & 19 Vict. c. 120, s. 105: 25 & 26 Vict. c. 102, s. 77: *expenses of paving new street upon bridge with side walls belonging to railway company: liability of company as owner of land bounding or abutting on a street*—A railway company built over its line of railway a bridge with side walls supported by piers standing on the slopes of the cutting through which the line ran. A road was carried over this bridge, which became a new street within the meaning of the Metropolis Management Acts. The district board of works paved this street, and called on the railway company to contribute to the expenses of this paving, on the ground that it was an "owner of land bounding or abutting on such new street, and therefore liable so to contribute:—*Held*, that the railway company was liable, that the bridge belonged to it, and that the side walls of the bridge were land bounding or abutting on the new street within the meaning of section 77 of 25 & 26 Vict. c. 102. *The Board of Works of the Hackney District v. The Great Eastern Rail Co.* (App.), 57

— (18 & 19 Vict. c. 120, and 25 & 26 Vict. c. 102): *practice: right of appeal: order made under 25 & 26 Vict. c. 102, s. 75: demolition of building: appeal in respect of penalties and forfeitures: meaning of forfeiture*—By the Metropolis Management Act,

1855, s. 231, which is incorporated with the Metropolis Management Amendment Act, 1862, any person aggrieved by any adjudication or determination of any justice "with respect to any penalty or forfeiture under that Act" may appeal to the sessions. By section 75 of the Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), the erection of any building in any street beyond the general line of buildings is prohibited, and it is provided that for any infringement of that provision the offender may be summoned before a Justice, who may order the demolition of the building, and make an order for costs:—*Held*, that the right of appeal given to sessions with "respect to any penalty or forfeiture" did not include proceedings taken under the 75th section of 25 & 26 Vict. c. 102. *Ex parte Eldon*, 94

Nuisance. See PUBLIC HEALTH.

Occupation. See POOR.

Parent and Child. See MANSLAUGHTER.

Parish. See ELEMENTARY EDUCATION ACT.

Paving. See PUBLIC HEALTH.

Peace, Breach of. See PRIZE FIGHT.

Penalties. See LICENSING ACT; METROPOLIS MANAGEMENT ACTS; JUSTICES; SUMMARY JURISDICTION ACT.

Pharmacy Act, 1868 (31 & 32 Vict. c. 121), s. 17: *sale of poisons: name and address of seller*—By section 17 of the Pharmacy Act, 1868, it is made "unlawful to sell any poison unless the box, bottle, vessel, wrapper or cover in which such poison is contained be distinctly labelled with the name of the article and the word 'poison,' and with the name and address of the seller of the poison." The respondent kept a shop and sold there upon commission a poison, which was labelled with the name and address of the person, a duly qualified chemist, who supplied it to him, but not with his own name or address. The chemist who supplied him lived elsewhere, and had nothing to do with the sales in respondent's shop, beyond afterwards receiving the money realised, less the commission. On an information against the respondent under section 17,—*Held*, that he, having the control of the business of sale, was the seller, and must be convicted for not having his name and address on the label. *Templeman v. Trafford*, 4

Poisons. See PHARMACY ACT.

Poor—rating: market tolls: user of the soil: tolls in the nature of stallage—Where an open market is divided under the provisions of an Act of Parliament into parts, each of which is appropriated to a special purpose, such as potato stands, fruit market, and flower stands, and by the Act tolls or rents are reserved to the owner of the market from those who use the several divisions of the market, such tolls arise out of a use of the soil, and are in the nature of stallage tolls, so as to be rateable for the relief of the poor. *The Duke of Bedford v. The Overseers of St. Paul, Covent Garden*, 41

—**poor-law: rating: occupation: bookstalls in a railway station**—Newsagents, by agreement with a railway company under seal, obtained the exclusive right to sell newspapers, &c., at a railway station in consideration of yearly payments, recoverable as in the case of rent in arrear, with power to erect bookstalls, and with reasonable access to the station, the company reserving the power to choose and move the places for the bookstalls, to prevent the sale of objectionable prints, and to control the newsagents' servants through the station-master. The newsagents erected bookstalls, which were fixed to the structure of the station, and of which they retained the keys:—*Held*, that they were not rateable to the poor-rate. *Smith v. The Assessment Committee for Lambeth*, 106

—**poor-rate: notice of rate: extra-parochial place: duty of overseers**: 17 Geo. 2. c. 3. s. 1: 7 Will. 4 and 1 Vict. c. 45. s. 2: *place where no church or chapel: publication of rate*—A rate for the relief of the poor was made by the overseers of an extra-parochial place containing neither church nor chapel, but constituted a parish for poor-law purposes by virtue of 20 Vict. c. 19. The Act 7 Will. 4 & 1 Vict. c. 45. s. 2, substitutes a written notice to be affixed on the church door for the public notice of every rate required by 17 Geo. 2. c. 3, to be given in church. The earlier Act says that no rate shall be valid unless such notice shall have been given. No notice or publication of this rate was given or made within the parish:—*Held*, that the rate was bad. *Reg. v. Dyott, Justices of Staffordshire, and Levett*, 104

—**order of removal: exemption by residence: widow: residence partly during life of husband**: 9 & 10 Vict. c. 66. s. 1: 11 & 12 Vict. c. 111. s. 1—After a husband and wife had, by residence in a union, acquired irremovability under the Poor Removal Act, 1846 (9 & 10 Vict. c. 66), s. 1, as amended by later Acts, the husband went to reside elsewhere, and the irremovability was lost. He died. The widow shortly afterwards became chargeable to the union in which they had resided.

An order was thereafter made for her removal:—*Held*, that by reason of the break of her husband's residence, her residence during his life was not residence within the statute, and, consequently, her residence as widow not having alone sufficed to render her irremovable, she was removable. *Reg. v. The Overseers of the Township of Manchester*, 6

— *settlement by residence: removal to parish in the same union*: 39 & 40 Vict. c. 61. s. 34]—The 34th section of 39 & 40 Vict. c. 61 enacts that "where any person shall have resided for the term of three years in any parish, in such manner and under such circumstances in each of such years as would, in accordance with the statutes in that behalf, render him irremovable, he shall be deemed to be settled therein until he shall acquire a settlement in some other parish by a like residence or otherwise":—*Held*, that a person who had resided in a parish for a term of three years, but had removed before the passing of the Act, did not acquire a settlement therein, notwithstanding that he continued to reside in the same union, but in another parish, until after the passing of the Act. *The Guardians of the Poor of Sunderland v. The Clerk of the Peace of the County of Sussex*, 33
The Queen v. The Ipswich Union (46 Law J. Rep. M.C. 207; Law Rep. 2 Q.B. D. 269) and *The Guardians of Plumsgate Union v. The Guardians of West Ham Union* (50 Law J. Rep. M.C. 51; Law Rep. 6 Q.B. D. 576) followed. *Ibid*.

— See ELEMENTARY EDUCATION.

Practice. See METROPOLIS MANAGEMENT ACTS.

Prize Fight—assault: aiding and abetting: evidence of]—The prisoners were indicted for a common assault. It was proved that the prisoners were in a crowd, which surrounded a ring, formed by ropes supported by posts, where a prize fight was going on; that they took no part in the management of the fight, and they neither said nor did anything. The jury were directed that prize fights are illegal, and that all persons who go to a prize fight to see the combatants strike each other, and who are present when they do so, are guilty in law of an assault; and that, if the persons indicted were not casually passing by, but stayed at the place, they encouraged the fight by their presence, although they did not do or say anything. The jury found the prisoners guilty, but added that they did so in consequence of such direction of law, as they found that the prisoners were not aiding and abetting:—*Held* (LORD COLERIDGE, C.J., POLLOCK, B., and MATHEW, J., dissenting), that the conviction must be quashed, as the

direction of the chairman was incorrect. The mere voluntary presence of persons at a prize fight does not necessarily make them guilty of an assault, as aiding and abetting. *Regina v. Coney* (C.C.R.), 66

Held (by LORD COLERIDGE, C.J., POLLOCK, B., and MATHEW, J.), that a voluntary spectator at a prize fight, by his mere presence, must be deemed, in the absence of rebutting evidence, to be a person encouraging and aiding and abetting such fight, and therefore guilty of assault. *Ibid*.

Held (by the whole Court), that the combatants at a prize fight, and all persons aiding and abetting therein, are guilty of an assault, for which an indictment will lie. *Ibid*.

Prohibition. See PUBLIC HEALTH.

Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 47: nuisance: not injurious to health]—Section 47 of the Public Health Act, 1875, enacts that "any person who in any urban district keeps any swine or pig-sty in any dwelling-house, or so as to be a nuisance to any person," shall be liable to a penalty:—*Held*, that it is not necessary that the nuisance should be injurious to health in order to constitute an offence under this section. *The Banbury Urban Sanitary Authority v. Page*, 21

— (38 & 39 Vict. c. 55), s. 211: *assessment of premises let on short tenancies: assessment of owner instead of occupier: rateable value where owner assessed for tenements whether occupied or unoccupied]*—The Public Health Act, 1875, empowers, by section 211, the rating authority to assess to the rates the owner instead of the occupier of premises where the rateable value does not exceed ten pounds, or where the premises are let to weekly or monthly tenants, and provides that in such cases the owner shall be assessed on a reduced estimate, not being less than two-thirds nor more than four-fifths of the net annual value, and where such reduced estimate is in respect of tenements whether occupied or unoccupied, "then such assessment may be made on one-half of the amount at which the tenements would be liable to be rated" if they were occupied and the rate were levied on the occupiers:—*Held* (affirming the judgment of the Queen's Bench Division, *Ante*, p. 27), that the rating authority has under this section a discretion as to the mode of rating, but that if it rates the owner for such premises whether occupied or unoccupied, then the assessment must be upon one-half the rateable value. *Reg. v. Barclay (Justices of Essex)*, (App.), 47

— (38 & 39 Vict. c. 55), ss. 150 and 268: *paving streets: apportionment of expenses:*

disputing apportionment: notice of demand: appeal by party aggrieved: time for appeal: memorial to local government board: grounds of appeal: prohibition—By the Public Health Act, 1875, s. 150, a local authority may, in certain cases, give notice to owners of premises adjoining streets to level, pave, &c., within a time to be specified in such notice; and if such notice is not complied with, the urban authority may do the work themselves, and recover summarily the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority, or (in case of dispute) by arbitration. *Reg. v. The Local Government Board and Taylor*, 121

By section 257, the time (six months) within which summary proceedings are to be taken for the recovering of expenses is to be reckoned from the date of the service of notice of demand. Where such expenses have been settled and apportioned by the surveyor as payable by an owner, such apportionment shall be binding and conclusive, unless within three months from service of notice on him of the amount so settled, he shall by written notice dispute the same. *Ibid.*

By section 268, an appeal is given to a person aggrieved by the chairman of a local authority in any case in which the local authority are empowered to recover summarily expenses incurred by them, or to declare such expenses to be private improvement expenses, within twenty-one days after notice of the decision, by a memorial stating the grounds of complaint, to the Local Government Board, who may make such order in the matter as may seem equitable. *Ibid.*

On the 4th of May, 1881, a local board gave notice, under section 150 of the Public Health Act, 1875, to T., an owner of premises adjoining a street, to level, pave, &c. T. having made default the board did the works themselves. On the 19th of September, 1881, an apportionment was made by the surveyor of the board, and a notice was served on T. that his proportion was 252*l.* odd, and that the apportionment upon him would be binding and conclusive unless disputed within three months from the date of the notice. On the 20th of December, 1881, notice of demand was served upon T. requiring payment of the above sum, and threatening proceedings in case of non-payment within a certain time. On the 10th of January, 1882, T. entered an appeal, under section 268 of the Public Health Act, by sending a memorial to the Local Government Board, which did not dispute the apportionment, but complained that a considerable portion of the works in respect of which the demand was made was not required, and that the cost incurred upon them was altogether excessive:—*Held*, that there was no decision whatever in respect

of which T. was aggrieved until the notice to pay; and that upon appeal to the Local Government Board within twenty-one days afterwards T. had a right to dispute the necessity of the works, as well as the sums expended upon them. *Held* also, that inasmuch as the Local Government Board had jurisdiction to entertain an appeal from the notice of the decision of the board to proceed summarily, prohibition would not lie on the ground that they would perhaps take into consideration upon that appeal matters which did not properly arise before them. *Ibid.*

Quære, as to whether prohibition will lie at all in the case of a tribunal constituted as the Local Government Board is. *Ibid.*

Quarter Sessions. See BASTARDY.

Railway Clauses Act. See SUMMARY JURISDICTION ACT.

Rate—notice of. See POOR.

— See PUBLIC HEALTH.

Removability. See POOR.

Right, Claim of. See JUSTICES.

Riot—*unlawful assembly*—A lawful assembly is not rendered unlawful by reason of the knowledge of those taking part in it that opposition will be raised to it, which opposition will in all probability give rise to a breach of the peace by those creating it. *Beatty v. Gillbanks*, 117

Sale of Food and Drugs Act, 1875—(38 & 39 Vict. c. 63), ss. 6, 12, 13 and 14: *adulterated article: purchase by private individual: notification to seller: analysis*—The provisions of section 14 of the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), apply equally to the case of a purchase by a private individual under section 12, and by the public officer mentioned in section 13 of the Act. *Parsons v. The Birmingham Dairy Co.*, 111

Settlement. See POOR LAW.

Severn River. See FISHERY LAWS.

Solicitor. See FRAUD.

Station, Railway. See POOR.

Street. See METROPOLIS.

Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), ss. 6 and 35: *railway clauses consolidation act, 1845* (8 Vict. c. 20), ss. 103, 145, 146, 147: *penalty: criminal offence: "civil debt": distress warrant: imprisonment*—An offence under section 103 of the Railway Clauses Consolidation Act, 1845, is a criminal offence, and the penalty recoverable under that section is not a "civil debt" within the terms of section 6 of the Summary Jurisdiction Act, 1879; nor do the provisions of section 35 of that Act apply in such a case. The magistrate may on conviction and non-payment issue a distress warrant under section 146 of the Railway Clauses Consolidation Act, 1845, and if sufficient distress is not found shall imprison the defendant under section 147. *Reg. v. Paget, 9*

Quere, whether the magistrate is bound on non-payment forthwith to issue a distress warrant. *Ibid.*

— See BASTARDY.

Surveyor. See HIGHWAYS.

Tidal River. See JUSTICES.

Tells. See POOR.

Traffic. See HIGHWAY.

Turnpike. See HIGHWAY.

Wales. See LICENSING ACTS.

Water—waterworks clauses act, 1847 (10 & 11 Vict. c. 17), s. 4: *supply of water to houses: water by measurement: liability of consumer to supply meter: waterworks clauses act, 1863* (26 & 27 Vict. c. 93), ss. 14 and 16: *refusal to supply water: non-payment of rate in advance*—The Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), s. 14, provides that where undertakers are authorised by this special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, for such remuneration in money as may be agreed upon between them and the consumer. A special Act of a water company incorporated the Waterworks Clauses Act, 1863, and compelled a water company (unless prevented by clauses beyond their control) to supply water at certain rates per thousand gallons for, *inter alia*, baths, without imposing any obligation on the part

of the consumer to provide a meter:—*Held*, that no such obligation could be implied from section 14 of the Waterworks Clauses Act, 1863, and that the company were not entitled to require, as a condition precedent to the supply, that the consumer should put up, at his own expense or hire from the company, a meter for the purpose of measuring the water supplied. *The Sheffield Waterworks Co. v. Carter. Brooks v. The Sheffield Waterworks Co. The Sheffield Waterworks Co. v. Brooks, 97*

By the Waterworks Clauses Act, 1847, section 43, a penalty is imposed on undertakers who neglect or refuse to furnish an occupier entitled under that or any special Act with a supply of water during any part of the time for which the rates for such supply have been paid or tendered. *Ibid.*

B. supplied a bath in his house with water by means of a pipe communicating with the cistern into which water was conveyed from the company's mains for purposes of ordinary family use, not including baths. B. had paid in advance, for the quarter ending the 29th of September, the sum properly payable for the supply of water for ordinary family use, but had made no tender or payment in respect of the water supply to the bath during the same period. The company insisted upon measurement of the quantity of water supplied to the bath by meter to be provided by B. or let to him on hire by the company; and upon B's refusal either to comply with the company's demand, or to disconnect the pipe which supplied the bath from the cistern, the company proceeded, on the 20th of September, to cut off the communication pipe between their main and B's cistern, and so stopped the supply of water to B's house. On the 24th of September, B. severed the inlet pipe from the cistern which communicated with the bath (allowing, however, the outlet pipe of his bath to remain), but gave no notice to the company that he had done so until the 29th of September, on which day he also paid in advance the proper amount for the supply of water for domestic purposes for the quarter ending the 24th of December. The company, however, refused to supply water, on the ground that B. had not cut off the outlet pipe from his bath, until the 4th of November, when they restored the communication under protest:—*Held*, that the company were not liable to a penalty under section 43 of the Act of 1847 for refusing to supply B. with water between the 20th and 29th of September, inasmuch as that section contemplates a payment or tender in advance for the supply required; and that inasmuch as B. had neither paid nor tendered anything in respect of the supply of water required for the bath, there was not a neglect or refusal within the meaning of that section:—*Held*, further, that the neglect and refusal must be with knowledge of the circum-

stances entitling an occupier to a supply, and that accordingly, as to the period between the 24th of September and the 29th of September, the company not knowing that the bath had been disconnected were in the same position as before. But, *held*, that the company were liable to a penalty for the period between the 29th of September and the 4th of November, inasmuch as they were not justified in refusing to supply B. with water between those dates, and were not entitled to insist upon the outlet pipe of the bath being removed. *Ibid*.

Words—"Bounding or abutting on," 57

— "Civil debt," 9

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— "House, office, room or other place," 53

— "May, if shall seem fit," 132

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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1882:

CASES
IN THE
Probate, Divorce and Admiralty Division
OF

THE HIGH COURT OF JUSTICE,

REPORTED BY
EDWARD STANLEY ROSCOE AND EDMUND FULLER GRIFFIN,
BARRISTERS-AT-LAW;

AND ON APPEAL THEREFROM

IN
The Court of Appeal and House of Lords,

REPORTED BY
ARTHUR CLEMENT EDDIS, H. LACY FRASER,
ROBERT BRUCE RUSSELL, WILLIAM EDWARD GORDON,
AND
(*in the House of Lords*) LIONEL LANCELOT SHADWELL,
BARRISTERS-AT-LAW.

MICHAELMAS 1881 TO MICHAELMAS 1882.



PROBATE, DIVORCE AND ADMIRALTY DIVISION.
VOLUME LI.

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MDCCCLXXXII.

CASES ARGUED AND DETERMINED
IN THE
Probate, Divorce and Admiralty Division
OF
THE HIGH COURT OF JUSTICE,
AND ON APPEAL THEREFROM TO THE
COURT OF APPEAL AND HOUSE OF LORDS.

MICHAELMAS 1881 TO MICHAELMAS 1882.

45 *Victoria.*

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
1881.
Dec. 1. }

THE CITO.*

Abandonment of Ship—Salvage—Right of Cargo-owner to release Cargo after Arrest—Right of Shipowner to Freight.

A ship, destined for R., with a cargo, was abandoned as a derelict, brought by salvors into an intermediate port and there arrested on behalf of the salvors.

On a motion by the cargo-owners to release the cargo at that port, on giving bail,—

Held (by the Court of Appeal, affirming the judgment of the Admiralty Court), that the owners were entitled to have the cargo released, and were not liable to pay any freight to the shipowner, for that the abandonment of the ship as a derelict entitled the owner of the cargo to treat the contract of affreightment as being at an end.

Appeal from the Admiralty Division.

A Norwegian barque—the Cito—left

** Coram Brett, L.J.; Cotton, L.J.; and Lindley, L.J.*

VOL. 51.—P., D. & A.

Wilmington for Rotterdam, in May, with a cargo of resin. She was soon afterwards abandoned as a derelict, was picked up by the crew of the *Colonist* and was brought into Plymouth in July.

The *Cito* was then arrested on behalf of the owners of the *Colonist* as plaintiffs in an action for salvage. An appearance was entered both by the owners of the *Cito* and by the owners of the cargo. The owners of the cargo then moved to release the cargo without payment of freight; the owners of the *Cito* opposed and offered to give bail for the cargo in order that they might carry it to Rotterdam, complete the voyage and thus earn freight. The owners of the cargo stated on affidavit that the cargo was not required at Rotterdam, and that they had instructed their agents to take delivery thereof at Plymouth.

Sir R. Phillimore made an order releasing the cargo on bail being given by the owners of the cargo, and on their giving an undertaking to keep an account of sales.

The owners of the *Cito* appealed.

Stubb, for the appellants.—The Judge

B

The Cito (App.), Adm.

of the Admiralty Court considered that he was bound by *The Kathleen* (1), but the circumstances of the two cases are different, and this Court can reverse that decision. It is submitted that if any accident happens on a voyage, and a ship is brought in any way whatever into a port not the port of destination, the shipowner is entitled, if the cargo is not of a perishable nature, to carry that cargo to its appointed destination, so as to earn the whole freight, and if the cargo-owner wishes to receive the cargo elsewhere, he must pay the full freight; or if, in such a case, the shipowner permits the cargo owner to have the cargo elsewhere, there is then a new contract, and it is an implied term of that new contract that *pro rata* freight should be paid, or payment must be made on a *quantum meruit*.

[BRETT, L.J.—Abandonment makes a clear distinction between this case and cases where there is salvage without abandonment.]

The Kathleen (1) was abandoned, but there the cargo was a perishable cargo—here it was not; here it was not already sold, and here there was an offer to give bail for it.

[BRETT, L.J.—*The Kathleen* (1) was seized not for the owner, but for the Crown, and the judgment is not based on the perishable nature of the cargo.]

But the act of the Court moved by the owner of the cargo is the act of the owner—*Cargo ex Galam* (2)—who has thus prevented the contract from being completed, so that the shipowner is entitled to *pro rata* freight—*The Soblomsten* (3). The contract of affreightment remains valid, for it has never been abandoned. The appellants tendered bail before any order had been made as to the cargo, and the possession of the Court is only possession on behalf of the parties entitled.

The Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 443, 468, and *The Dantzic Packet* (4) were also referred to.

(1) 43 Law J. Rep. Adm. 39; Law Rep. 4 A. & E. 269.

(2) Br. & L. 167.

(3) 36 Law J. Rep. Adm. 5; Law Rep. 1 A. & E. 293.

(4) 3 Hag. Adm. 383.

Myburgh, for the respondents, the owners of the cargo.—Abandonment of the ship is equivalent to abandonment of the contract of affreightment. There cannot be any claim for *pro rata* freight unless there is an implied contract, and none such can be here implied. In the case of a derelict ship the property is gone from the owner and is in the Crown; so that the seizure is made on behalf of the Crown, which, as a rule, waives its right and gives back the ship to the owner.

[BRETT, L.J.—The seizure changes the possession, but does it change the property?]

The owner of the ship cannot dispose of her while the salvors' lien exists; the test is whether the shipowner is entitled to the whole freight. In this case the salvors conveyed the cargo nearly all the way, and as the owners of the cargo are liable for, and have paid, what is equivalent to freight to the salvors, it cannot be that they have to pay it over again to the shipowners. The ship was abandoned and the cargo-owners have claimed their cargo before the shipowners have resumed possession. *The King v. Derelict* (5) is an authority for the respondents.

Stubbs, in reply.

BRETT, L.J.—I am of opinion that this appeal must be dismissed. Many interesting points have been discussed during the argument on which I do not think it necessary to give an opinion. It has been said that a ship so abandoned as to become a derelict, then subsequently seized in such a way as to make the seized ship a *droit* of the Admiralty, causes the property in such a ship so seized to be altered. That proposition is stronger than the one which it is necessary to affirm in the present case in order to support this order and to uphold the decision in *The Kathleen* (1), and I am not prepared to say that the property is, in such a case, so altered. I assume for the present that it is not. It was then said that the abandonment of a ship so as to leave it a derelict put an end to the contract of affreightment. I am not, however, prepared to hold this at present.

(5) 1 Hag. Adm. 383.

The Cito (App.), Adm.

Suppose a case of wrongful abandonment. It is obvious that in such a case the contract would not be at an end, for the owner of the cargo could sue the shipowners on the contract for the wrongful abandonment. But it seems to me, in order to determine this case, sufficient to say that by an abandonment of a ship and cargo without any intention to retake possession, the shipowner has so far abandoned the contract so as to give the other party a right to treat the contract as abandoned, if he should elect to do so.

In the circumstances of this case the ship was brought into the Court of Admiralty, so that the owner of the ship cannot have possession and cannot enforce the contract against the owner of the cargo. Now, before the shipowner gets again possession of the ship the owner of the cargo claims to be allowed, bail being put in, to release the cargo and to take it out at Plymouth, instead of allowing it to be carried to the original destination at Rotterdam, so that he elects to consider the contract of affreightment at an end at that place; but the shipowner endeavours to prevent the cargo-owner from doing this, and claims to have the ship and cargo redelivered to him, so that he may complete his contract of affreightment. It seems to me that the Court of Admiralty would have been wrong to deprive the owner of the cargo of the right to treat what the shipowner has done as an abandonment of the contract of affreightment, but that, on the contrary, the Court was bound to allow the cargo-owner to exercise the right of election; and that is what this order does. This decision does not deal with the case of a ship which has been abandoned and brought in and dealt with without any interference on the part of the owner of the cargo: it is not necessary to determine that case now, and we do not decide it. It follows from what I have said, that a cargo-owner who has not done any tortious act is not in such a case liable to *pro rata* freight or any freight at all.

COTTON, L.J.—I am of the same opinion. I think on the facts of the case the Admiralty Court was right. There was an abandonment of the ship, and this amounts, I think, to an abandonment, as far as the

shipowner can abandon, of the contract of carriage, so that it is not open to the shipowner to take any objection to the conduct of the owner of the cargo, who might agree, if he so chose, with the salvor to carry the cargo. It is true that the shipowner could not by his own act put an end to the contract of affreightment; but his conduct gave the right to the owner of the cargo to say that the shipowner had abandoned the contract of affreightment, and to take other measures to dispose of the cargo. Acting on this view of the case I give no opinion as to what would be the judgment of the Court if the shipowner had again got possession of the ship and had made a settlement with the salvor. By the order before us the Court has held that the claims of the salvor must be satisfied, and that order was right and must, in my opinion, be upheld.

LINDLEY, L.J.—I am of the same opinion. I had a difficulty during the argument as to whether the position of the parties had been altered by the offer of the shipowner to give bail; but that doubt has been dispelled, and I agree that the effect of the abandonment of the ship is to give the owners of the cargo a right to treat the contract of affreightment as terminated, and I do not think that this right is in any way forfeited by the offer to give bail to which I have referred.

Appeal dismissed.

Solicitors—Cooper & Co., for appellants; Pritchard & Sons, for respondents.

DIVORCE. }
1881. }
May 24. }

JARDINE v. JARDINE.

Divorce — Permanent Maintenance — Variation of Order—Weekly Payments—20 & 21 Vict. c. 85. s. 32—29 Vict. c. 32. s. 1.

An order for permanent maintenance may, under the 29 Vict. c. 32. s. 1, provide for the payments being made monthly or weekly, whatever the amount of the allowance, and may be from time to time varied by the Court.

The petitioner had obtained a decree dissolving her marriage on the ground of her husband's adultery and cruelty, and had afterwards presented a petition for permanent maintenance.

The respondent was a diamond and jewel merchant and broker, and it appeared from the Registrar's report that for the last few years he had made no profits, although the income derived by him from his business was sometimes very large, and he had in one year made a profit of 18,000*l.* The report estimated his present capital at about 60,000*l.*, although it would not be likely at present to realise more than 20,000*l.* The respondent had an income from other sources of about 422*l.*, and the Registrar reported that his whole income should be estimated at between 1,600*l.* and 1,700*l.*, and that he ought to pay 400*l.* a year for the petitioner's maintenance, and 450*l.* a year for the maintenance and education of the four youngest children of the marriage.

On the Registrar's report coming before the Court for confirmation the President of the division raised the amount to be paid to the petitioner to 500*l.* a year, and in all other respects confirmed the report; all payments to be made quarterly.

The respondent appealed to the full Court against so much of the order as directed the payment of 500*l.* a year to the petitioner.

Dr. Deane, Q.C., and Dr. Tristram, for the respondent.—The amount ordered to be paid is excessive, having regard to the respondent's present pecuniary position; and 20 & 21 Vict. c. 85. s. 32, under which this

order is made, does not provide for a reduction of the allowance in the event of a further falling off in the profits of the respondent's business. No doubt the 29 Vict. c. 32. s. 1 enables the Court from time to time to vary the order, but the preamble of the statute shews that it applies only to the case of a man who has no property upon which any profit or annual payment can be secured (1).

Inderwick, Q.C., and Pritchard, for the petitioner.

LORD COLERIDGE, C.J.—In this case it is clear that if Sir James Hannan had been

(1) The following are the material parts of the sections referred to: "The Court may . . . order that the husband shall to the satisfaction of the Court secure to the wife such gross sum of money or such annual sum of money for any term not exceeding her own life as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it shall deem reasonable, and for that purpose may refer it to any one of the conveyancing counsel of the Court of Chancery to settle and approve of a proper deed or instrument to be executed by all necessary parties" (20 & 21 Vict. c. 85. s. 32).

"Whereas it sometimes happens that a decree for a dissolution of marriage is obtained against a husband who has no property on which the payment of any such gross or annual sum can be secured, but nevertheless he would be able to make a monthly or weekly payment to the wife during their joint lives,

"In every such case it shall be lawful for the Court to make an order on the husband for payment to the wife during their joint lives of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided always, that if the husband shall afterwards from any cause become unable to make such payment, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same, as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the Court may seem fit" (29 Vict. c. 83. s. 1).

Jardine v. Jardine, Div.

asked in the first instance to act under the second Act of Parliament instead of under the first, he would have done so, and made this order one for monthly payments. For myself, it seems that where the marriage has been dissolved it is difficult to make under the first Act an order that could be variable from time to time; and it was probably for that reason, and for the very purpose of providing for cases in which it was manifestly just and necessary to vary the order according to the altered circumstances of the husband, that the second Act was passed. It may be, as Mr. Inderwick says, that it was passed only for a poor man; but whether it was so or not, the words are abundantly sufficient to include the case of a person like the appellant, who has a large capital fairly and reasonably locked up in trade, so that it is not easy to secure upon it a fixed sum without doing that which, of course, it is most desirable not to do, namely, destroying the means by which the trade is carried on. I should therefore have said that this was a case in which the very words of the second Act are clearly applicable, and the order will be made under that Act; and as to the amount awarded by the President, all the evidence I have heard fails to shew that, *rebus sic stantibus*, this order is in any way wrong. It may be that, with a variation in trade, it may hereafter become wrong, and if so, being made, as it now will be, under the second Act of Parliament, there is under that Act—if it is not given by the order itself—power to come from time to time to the Court to have the order varied according to the means of the husband. With that variation I think the order should be affirmed.

SIR ROBERT PHILLIMORE.—I concur, and for the same reasons.

THE PRESIDENT (SIR JAMES HANNEN).—As I have the opinion of the other members of the Court that upon this evidence the amount that has been arrived at by me is correct, my only reason for calling particular attention to the matter is this—that although the order is varied it must not be considered that, *rebus sic stantibus*, the husband is to come next month and ask

for the allowance to be diminished. The view which I took of it at the time was this: this was a business of which it was impossible to estimate the profits, as in the case of most businesses, annually—but it was necessary to ascertain them on a series of years. If that is the correct view, it will follow that this gentleman must not assume that he is enabled to come after only a short interval and apply that the amount may be reduced. I will not attempt to define what is a reasonable time—that will depend upon the circumstances; but a reasonable time must elapse before he can ask for a diminution of the allowance to the wife.

Order varied by substituting monthly payments for quarterly payments. Petitioner's costs of appeal to be paid by the respondent.

Solicitors—H. C. Coote, for petitioner; E. J. Sydney & Son, for respondent.

[IN THE COURT OF APPEAL.]

DIVORCE. }
1881. } ROBERTSON v. ROBERTSON.*
July 18, 19. }

Divorce—Wife's Costs—Practice.

Where a decree nisi is made upon a husband's petition for divorce, he must nevertheless pay all the costs properly incurred by the wife in defending herself against the charges brought against her.

This was an appeal by the wife from a decree *nisi* by Sir James Hannen (the Judge Ordinary), granting a dissolution of marriage on the petition of the husband on the ground of the wife's adultery, and limiting, according to the usual practice, the husband's liability to pay the wife's costs of the suit to the amount of the security he had given for the same.

The *Appellant* appeared in person, and contended that the verdict was against the weight of the evidence; and, secondly, that she was entitled to all the costs which

* *Coram* Jessel, M.R.; Brett, L.J.; and Cotton, L.J.

Robertson v. Robertson (App.), Div.

she had incurred in defending herself against the charges brought against her.

Inderwick, Q.C., and *Middleton*, for the husband.

JESSEL, M.R., said—This is an appeal which raises two questions—one of fact and the other of practice. The first question is, whether the judgment of the Court below pronouncing a divorce is sufficiently supported by evidence; the second question is, whether the costs ordered to be paid to the wife should not exceed the amount that has been paid into Court by the husband. [His Lordship then dealt with the first point, and on the merits affirmed the judgment of the Court below, and continued:] As to the wife's costs of the suit, I think the husband ought to have been ordered to pay the whole of the reasonable costs incurred by the wife. According to the present practice in divorce suits, the husband is required to deposit in Court, or to give security for, a sum of money to answer the wife's costs properly incurred. It is also the practice, where the wife fails in her defence, and costs are awarded to her solicitor, to limit his costs when taxed to the amount which the husband has paid into Court or for which he has given security. But in fairness to Sir James Hannen, it is right to say that he did not originate this practice, but only followed the rule laid down by his predecessors, Sir Cresswell Cresswell and Lord Penzance. Now the practice of the old Ecclesiastical Court was to tax and pay the whole of the wife's costs before the trial, without limiting the amount to any sum deposited by the husband by way of security, and that seems to me to have been a very proper practice. At that time all the evidence was taken by affidavit, and there was therefore no difficulty in taxing costs before the trial. But when, under the Divorce Act of 1857, the practice was introduced of taking the evidence orally at the trial, it became impossible to know beforehand what witnesses would be called, and therefore it was impossible to estimate beforehand what the costs would be, and impossible to tax them before the trial. And then, as the old rule could not be followed, the practice was adopted, by a false analogy to the old rule,

of estimating the costs beforehand, and requiring the husband to give security for or to deposit in Court the estimated amount; and the costs when taxed were limited to the sum so secured or deposited in Court by a mere guess as to the amount which would be actually required. In my opinion it is very proper that a husband should pay the costs incurred by his wife in defending herself against so heinous a charge as adultery. By the law of England all the wife's property, in the absence of a settlement on her marriage, becomes the property of her husband. She may, therefore, often be unable to meet the expenses of her defence. Some means must be provided to enable her to defend herself against the charge of unfaithfulness, and the defence must be conducted by a solicitor, who could only look to the husband for payment. Why should he lose his remuneration merely because the defence was unsuccessful? As Sir James Hannen said, in *Flower v. Flower* (1), it is not the solicitor's fault that the wife is wrong, and he is not to lose the fair reward of his labour merely because the defence is unsuccessful. When, therefore, the defence has been fairly and reasonably conducted, the solicitor is entitled to be paid the full amount of his costs properly incurred on behalf of the wife. This is not an appeal from the discretion of the learned Judge below, because he did not exercise his discretion at all, but merely followed the practice of his predecessors, and made the usual order as to the wife's costs. It is competent for this Court, therefore, to alter the practice, if we consider it to be erroneous, and to lay down what appears to us a more just rule. Moreover, in disposing of this question, we must not lose sight of the old rule of the House of Lords on Divorce Bills, which may be called the nobler rule, that no man of right feeling would wish that his wife should not have the means of defending herself against so odious a charge. In this case there is no suggestion that the solicitor for the wife has conducted her defence improperly; he is therefore entitled to be paid the full amount of his costs.

The result is, that the order of the

(1) 42 Law J. Rep. Prob. & M. 45; Law Rep 3 P. & D. 132.

Robertson v. Robertson (App.), Div.

Court below must be amended by striking out the words limiting the wife's costs to the amount paid into Court, or secured by the petitioner; and as the appellant has succeeded on one point of her appeal, but failed on the other, there will be no order as to the costs of the appeal.

BRETT, L.J., and COTTON, L.J., concurred.

Solicitors—Waddilove & Nutt, for respondent.

ADMIRALTY. }
1881. } THE GAETANO E MARIA.
Nov. 3, 11. }

Bottomry Bond — Communication — Maritime Law and Law of the Flag.

Communication, when possible, with the owners of a ship and cargo is necessary to the validity of a bottomry bond, and this principle of maritime law will be enforced when a bottomry bond is sued on in this country, even though by the law of the ship's flag non-communication does not invalidate a bond.

This was a demurrer to a reply. The action was brought by Robert McAndrew & Co., who were the lawful holders of a bottomry bond on the cargo and freight of the Italian ship *Gaetano e Maria*. The bottomry bond was entered into at the island of Fayal, in the Azores, by the master, who was also a part owner of the vessel. By the 6th paragraph of the statement of defence, the owners of the cargo pleaded that the master was aware at the time of his arrival at Fayal that the cargo was shipped by a certain firm in New York, and that the ship was chartered for the voyage by a firm in London, and that the master did not communicate with the owners of the cargo, or with the charterers of the ship, as he should and could have done, and that the bond was consequently invalid. The plaintiffs, after denying the possibility of communication, by the 4th paragraph of their reply averred that "by the law of Italy, to which

country the *Gaetano e Maria* belonged, at the time the bond was executed, and at the time when it became due, the bottomry contract had to be entered into and the bond executed, as they in fact were, in the presence and with the intervention and sanction of the Italian consul or consular agent at the port of Fayal, and that upon their being so entered into and executed they became and were valid and effectual to bind both ship and cargo without any previous communication with the owners of the ship or cargo." By the 4th paragraph it was pleaded, that by the law of Italy a valid bottomry bond can be executed without any previous communication with the owners of the ship or cargo. To these paragraphs the defendants demurred. The question was thus raised as to the law by which the validity of a bottomry bond should be ascertained in the English Court of Admiralty.

C. Hall and Phillimore appeared for the plaintiffs.

Butt, Q.C., and Myburgh, for the defendants.

Butt, in support of the demurrer, argued that the Courts of this country would not decide according to the Italian law if it was contrary to the law of this country and of general maritime law. He relied on *The Hamburg* (1) and on *The Buona parte* (2), as shewing that communication was required in general maritime law. General maritime law was recognised quite recently in *The Leon* (3). The case of *Kleinwort v. The Cassa Maritima of Genoa* (4), *Aitchison v. Lohre* (5), *The Patria* (6) and *The Eliza Cornish* (7) were also cited.

Hall, contra, relied on *Lloyd v. Guibert* (8) and *Pope v. Nickerson* (9).

Cur. adv. vult.

(1) Br. & L. 295; 2 Moo. P.C. N.S. 289.

(2) 8 Moo. P.C. 459.

(3) 50 Law J. Rep. P., D. & A. 59.

(4) Law Rep. 2 App. Cas. 156.

(5) 49 Law J. Rep. Q.B. 123; Law Rep. 4 App. Cas. 755.

(6) 41 Law J. Rep. Adm. 43; Law Rep. 3 A. & E. 436.

(7) 1 Spink, 36.

(8) 33 Law J. Rep. Q.B. 241; Law Rep. 1 Q.B. 115.

(9) 3 Story, 465.

The Gaetano e Maria, Adm.

SIR R. PHILLIMORE.—The arguments in this case arose upon the demurrer and the facts material to the demurrer, and taken for the purposes of the argument as true, are as follows :—

The *Gaetano e Maria*, an Italian ship laden with cargo, and bound for London, being in distress, put in at Fayal in the Azores. Whilst there, her master, finding it necessary to raise money for the expenses of the ship, executed a bottomry bond for 2,330*l.* 2*s.* 7*d.*, purporting to bind ship, freight and cargo to one Antonio Coeltro, who thereupon advanced to him the above sum. The money was made payable, together with the maritime premium thereon, upon the safe arrival of the ship at her port of discharge. The bond was duly executed in the presence and with the sanction of the Italian consular agent at Fayal. Before executing the bond the master did not communicate with the defendants, who were then and still are the owners of the cargo, although it was reasonably practicable for him to do so. Antonio Coeltro subsequently indorsed the bond to the plaintiffs, who are the present holders of it. The *Gaetano e Maria* shortly afterwards proceeded on her voyage, and in May last arrived safely with her cargo at the port of London, and this action against her was commenced by the plaintiffs.

It is contended by the plaintiffs that as the ship is an Italian ship, and as the bottomry contract was duly entered into in the presence and with the sanction of the Italian consular agent, the case must be governed by the law of the ship's flag—that is, by the law of Italy—under which the master would have authority to bind the cargo-owners by his bottomry bond, though executed without previous communication with them, whether such communication were practicable or not.

The contention of the defendants is that their liability must be determined by the general maritime law as administered in England, and that under that law the bottomry bond, in the circumstances of the present case, would not be valid against them.

I am of opinion that the point raised is decided in favour of the defendants by the judgment of Dr. Lushington in *The Ham-*

burg (1). In that case the question was the validity, as against cargo-owners, of a bottomry bond entered into by the master of a German ship in circumstances very similar to those of the present case; and it was laid down by Dr. Lushington, who relies on Lord Stowell's judgment in *The Gratitude* (10), and on the case of *The Buonaparte* (2), that the general maritime law as administered in England was to be applied, and not the *lex loci contractus* nor the law of the ship's flag. This decision was affirmed on appeal by the Privy Council. The judgment of the Exchequer Chamber in *Lloyd v. Guibert* (8) was cited by the plaintiffs as impugning the authority of this decision, but Mr. Justice Willes, who delivered that judgment, expressly recognises and distinguishes the decision in *The Hamburg* (1). Moreover, the question in *Lloyd v. Guibert* (8) was by what law a contract of affreightment, and not the rights of a master to hypothecate cargo, should be governed. The plaintiffs also relied upon the case of *Pope v. Nickerson* (9), decided in the Circuit Court of the United States in 1844. There are some observations of Mr. Justice Story in this case which may appear to favour the plaintiffs' contention, but I am clearly of opinion that I am bound by the decisions of the Privy Council and of this Court to which I have referred.

The position of law is clear that communication by the master with the cargo-owners, if reasonably practicable, is necessary to constitute an agency and enable him to hypothecate the cargo. *The Hamburg* (1) recognises it as settled law, and the question is put beyond doubt by the more recent case of *Kleinwort v. The Casa Maritima of Genoa* (4), in which the previous decisions on this subject were referred to.

I give judgment on the demurrer for the defendants.

Solicitors—Lowless & Co., for plaintiffs; T. Cooper & Co., for defendants.

PROBATE. }
1881. } *In the goods of BARONESS*
Aug. 2, 3. } *VON BUSECK.*

Will—Probate—Foreign Subject—Execution abroad in accordance with English Law—24 & 25 Vict. c. 114. s. 1; 33 & 34 Vict. c. 14. s. 2.

A will executed abroad by an alien, in accordance with the requirements of English law, is not entitled to probate in this country under either the 24 & 25 Vict. c. 114. s. 1, or the 33 & 34 Vict. c. 14. s. 2.

The Dowager Duchess Caroline von Buseck, formerly of Homburg, deceased, executed, on the 5th of September, 1876, a will which was valid according to English law. She subsequently executed codicils, which were valid according to the law of Germany. All three instruments were executed in Germany.

The deceased was born in England, of English parents, but had been married to a German subject, and had never afterwards re-acquired the *status* of a British subject.

Jeune moved for probate of the will and codicils. The deceased was by birth a British subject, and therefore her will is entitled to probate, under 24 & 25 Vict. c. 114. s. 1, as having been made according to the forms required by the laws in force in that part of Her Majesty's dominions where she had her domicile of origin. If, however, she is to be taken to have been an alien, the case is within 33 & 34 Vict. c. 14. s. 2, which gives an alien all the powers of a British subject in disposing of real and personal property.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Aug. 3).—The question in this case turns upon the provisions of two statutes. The earlier one (24 & 25 Vict. c. 114) is generally known as Lord Kingsdown's Act, and is entitled, "An Act to amend the law with respect to wills of personal estate made by British subjects." The 1st section provides that "Every will and other testamentary instrument, made out of the United Kingdom by a British subject (whatever may be the domicile of such

person at the time of making the same, or at the time of his or her death), shall, as regards personal estate, be held to be well executed, for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required, either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin."

I think it can scarcely be contended that this enactment is applicable to the present case, for it is most carefully limited to the wills of British subjects, and whatever question may arise in the case of a man, as to whether he has or has not changed his nationality, there is no such question in the case of a woman who marries a foreigner, for she thereby puts off her own original nationality and takes that of her husband, and thenceforth ceases to be, in every sense of the word, a British subject.

It was, however, contended that the case was within the Naturalisation Act, 1870 (33 & 34 Vict. c. 14), which I conceive to have been passed with totally different objects. By the 2nd section, "Real and personal property of every description may be taken, acquired, held and disposed of by an alien, in the same manner, in all respects, as by a natural born British subject, and a title to real and personal property of every description may be derived through, from or in succession to an alien, in the same manner, in all respects, as through, from or in succession to a natural born British subject." It is said, that although the lady was an alien, she had the same right which a natural born British subject would have had, namely, to make a will, according to the forms in force in that part of Her Majesty's dominions where she had her domicile of origin; but I think that such an interpretation of the Act must be rejected, unless it be quite plain that the Legislature intended, with reference to personal property, that an alien should be able to make a will in a form not in conformity with the law of his own country. Of course, an English Court may be compelled by plain language thus to construe an enactment,

In the goods of Von Buseck, Prob.

but it is not to be presumed that anything which is contrary to the comity of nations has been intended by the English Legislature. On the other hand, there is a very plain and intelligible meaning which can be given to this Act, namely, that while it gives to aliens the same power to take, acquire, hold and dispose of real and personal property in the same manner, in all respects, as natural born British subjects, it does not deal with the question of what is to be the form of the will—a question which must depend upon other enactments. It leaves it in each particular case to be determined what, according to the law of the alien's country, is the form in which the testamentary disposition shall be carried out, and it merely gives an alien power to dispose in England of personalty by will, subject to the laws of his own country, as to the form in which the will is to be made. This seems to me the plain and intelligible construction to be put upon the enactment, and I must therefore reject the application.

Solicitors—Paterson, Snow & Bloxam.

ADMIRALTY. }
1881.
March 24. }

THE BUCKHURST.

Collision—Inevitable Accident—Regulations for Preventing Collisions at Sea, art. 6—36 & 37 Vict. c. 85. s. 17—Costs.

When a collision occurred during a gale of extraordinary violence, and a ship, being driven from her moorings, was unable to put up her side lights,—Held, that the collision was the result of an inevitable accident, and that the circumstances made a departure from the regulations necessary. But the suit, under the circumstances, was dismissed without costs.

This was an action for damage by collision.

*Butt, Q.C., and Nelson, for the plaintiffs.
Clarkson, Q.C., and Myburgh, for the defendants.*

The main questions in the case appear from the following judgment:—

SIR R. PHILLIMORE.—This is a case of collision which took place in Penarth Roads, between eight and nine o'clock on the evening of the 18th of January of the present year. The brig *Creole*, the owners of which vessel are the plaintiffs in this action, was anchored with two anchors, and with her proper riding light burning. The *Buckhurst* on the evening in question was anchored in the outer road. About six o'clock her port cable parted, and she then endeavoured to get out to sea, but the state of the weather was such that she got on to Cardiff Sands, and bumped over them, receiving injuries which caused her to make water, and damaging her rudder, so that she became almost unmanageable. While endeavouring to get on to the mud on Penarth Beach, the hurricane and heavy snow still continuing, the *Buckhurst* came into collision with the *Creole*, and did the damage complained of. There is no doubt that the weather was of the worst possible description, and that, under the circumstances, the injury was inevitable. It was contended, however, on the part of the *Creole*, that as the *Buckhurst* did not at the time carry her side lights, as required by article 6, she is, notwithstanding the circumstances of the weather and her injuries, still to be held to blame.

Now, from the time the *Buckhurst* got on to the sand to the time of the collision was about twenty minutes, and we think that it was not possible under the circumstances, to put up the side lights, so that the exception as to departure from the regulations being necessary which is found in the Merchant Shipping Act, 1873 (1), s. 17, applies. Further than that, we think that by no possibility could the fact of the absence of the side lights have contributed to the collision. Therefore I must dismiss the suit, as the collision was the result of an inevitable accident.

Nelson applied that the action should be dismissed without costs, and referred to *The London* (2) and *The Thornley* (3). As

- (1) 36 & 37 Vict. c. 85.
- (2) Br. & L. 82.
- (3) 7 Jur. 660.

The Buckhurst, Adm.

the *Buckhurst* had apparently infringed the regulations there was good ground for bringing the action.

Clarkson, contra.

SIR R. PHILLIMORE. — Having regard to the special circumstances of the case, and that the only light exhibited on the *Buckhurst* was her anchor light, I do not think it can be said the action ought not to have been brought. I think this is a case in which there ought to be no costs.

Solicitors—Lowless, Nelson & Co., for plaintiffs;
Parker & Co., for defendants.

ADMIRALTY. }
1881. }
March 9. }

THE KILLEENA.

Salvage—Derelict.

A derelict ship was boarded by a party of five men, who navigated her for four days and then signalled a passing ship for help. On their signal being answered they abandoned the derelict ship and took refuge on board the other ship. The latter ship put some hands on board the derelict and towed and stood by her until further help was obtained, and she was got into harbour:—Held, that no salvage was earned by the party who first boarded the derelict.

This was a consolidated action of salvage brought by the owners, master and crew of the ship *Nora*, and the owners, master and crew of the ship *Beatrice*, against the barque *Killeena*.

J. P. Aspinall, for the Nora.

Webster, Q.C., and Phillimore, for the Beatrice and Leipzig.

Cohen, Q.C., and Myburgh, for the defendants.

The facts and contentions of the parties are stated fully in the following judgment:—

SIR ROBERT PHILLIMORE.—This is a case of salvage service rendered to a vessel which was abandoned by her master and

crew. The *Killeena* was a barque of 795 tons, and left New York on the 26th of August last year, bound to Liverpool with a cargo of Indian corn and cotton. On the 6th of October she encountered a heavy gale, and took so heavy a list to port that her master caused the mainmast and the foremast to be cut away, and finding that she became unmanageable and could not be navigated, her master and those on board left her, and on the 9th of October she was abandoned. She drifted about in the Atlantic Ocean until the 12th of that month, when she was sighted by a Norwegian ship called the *Nora*, from which a crew of five hands were put on board her. On the 15th of October those men who went on board from the *Nora* were frightened and determined to abandon the vessel, and they hoisted an ensign union downwards, and that attracted the attention of those on board the *Beatrice*. Here a most important question arises, whether the owners, master and crew of the *Nora* are entitled to anything for their services. Now the principles of law applicable to the question are laid down in the case of *The Undaunted* (1), where is to be found the following passage: "Salvors who volunteer to go out at their own risk for the chance of earning reward, if they labour unsuccessfully, are entitled to nothing. The effectual performance of salvage service is that which gives them the title to remuneration; but if the men are engaged by a ship in distress, whether generally or particularly, they are to be paid according to their efforts made, even though the labour and service may not prove beneficial to the vessel." Now there is no doubt that some decisions have laid down this doctrine, that where a set of salvors have done some acts which tend to an ultimate salvage of a vessel, they are usually entitled to some remuneration. But there is a circumstance in this case most material to consider. The four men and the boy who were put on board from the *Nora* deliberately, according to the evidence, when the *Beatrice* had answered their signal, abandoned and deserted the *Killeena*.

It appears to me, therefore, that the *Killeena* was again a derelict vessel, as the

(1) Lush. 90.

The Killeena, Adm.

men on board her deliberately determined to leave her. Four men were found with better heart and courage to take the place of these men, and to do what was necessary for the preservation of the *Killeena*. It seems to me that the words of Lord Stowell in *The Yonge Bastiaan* (2) are applicable to this case. That was a case of salvage, and Lord Stowell, in delivering his judgment, said, "It appears that the vessel was stuck fast upon a rock, with her bottom beaten in and her rudder lost, when the first salvors went to her assistance in a very heavy sea, and succeeded in warping her off. She sank afterwards it is true; but it is not on that account to be said that the first salvors lost her again, or that they had abandoned their interest in her. They did not stay by the vessel, but it cannot be said that, having risked so much for her recovery, they meant to desert her whilst others were employed in their sight in weighing her up and in saving the cargo."

Now that was the reverse of this case. Here the men from the *Nora* did not stay by the vessel, and they had not the slightest intention of assisting her. It appears to me that it would be contrary to the principles upon which salvage remuneration is awarded to allow the *Nora's* men to recover as salvors in this case, inasmuch as they were, according to the evidence, turning their backs and running away from the danger to which the vessel was exposed. The men found on board the *Beatrice* had as much reason to be alarmed, but they persevered and their courage deserves to be rewarded. I am clearly of opinion that the owners, master and crew of the *Nora* are not entitled to claim salvage remuneration in this case. There are two other vessels—the *Beatrice* and the *Leipzig*—whose services have to be considered. The *Beatrice* towed the *Killeena* from the 15th to the 19th of October, and then stood by her until the 25th of October, but lost sight of her upon the 27th of October. The *Leipzig*, on the 9th of November, spoke the *Killeena* and offered her services, which were accepted, and, after a towage of two days and six hours, the *Killeena* was brought safely into harbour, and thereby very valuable assistance was rendered.

(2) 5 C. Rob. 332.

The first thing the Court has to consider is, what is the sum or total value out of which these services are to be rewarded to the salvors. The value of the property saved is 12,663*l.*, and out of that I shall make a total award of 4,200*l.* The *Beatrice* ran great risk in order to save this vessel, and deviated from her course, being thus delayed in the performance of her voyage. Out of the award I shall apportion to the owners, master and crew of the *Leipzig* 1,200*l.*, and the remaining 3,000*l.* to the *Beatrice*, to be distributed as follows: 300*l.* to the master of the *Beatrice*, 200*l.* among the four men placed on board the *Killeena*, of whom the plaintiff Cunningham is to have a double share, 200*l.* to the rest of the crew of the *Beatrice*, and 1,300*l.* to the owners of the *Beatrice*.

Solicitors—Stokes, Saunders & Stokes, for plaintiffs; Cooper & Co., for defendant.

PROBATE. } In the goods of CHARLES
1881. } MAHON TYNDALL.
Dec. 13.

Administration—Intestacy—Insolvent Estate—Marriage Settlement—Grant to Trustee—20 & 21 Vict. c. 77. s. 73.

A died intestate. His estate was insolvent, the only asset of any value being an interest in a mortgage of property in Ceylon, which he had conveyed to the trustees of his marriage settlement, one of whom was B, his brother-in-law. A was a widower, and left five children, two of whom were of full age. The two adult children had renounced administration.

The Court, on a renunciation by the eldest son on behalf of the minor children, who had appointed him as their guardian for the purpose of the application, made a grant of administration to B under 20 & 21 Vict. c. 77. s. 73.

Charles Mahon Tyndall, barrister-at-law, died intestate on the 20th of November, 1881.

The deceased was a widower and left

In the goods of Tyndall, Prob.

five children, two of whom were of full age.

The estate was insolvent, and the only asset of any value was an investment in a mortgage upon certain real property in the island of Ceylon. The deceased had conveyed his interest in the mortgage to the trustees under his marriage settlement.

Application was now made for a grant of letters of administration to Mr. Stacey, brother-in-law of the deceased, who was one of the trustees under the marriage settlement. The adult children of the deceased had renounced administration, and had consented to the grant being made to Mr. Stacey, and the children who were minors had appointed their eldest brother (who was of full age) as their guardian for the purposes of the present application.

Bayford, in support of the motion.—The Court has power to make the grant to Mr. Stacey, under 20 & 21 Vict. c. 77. s. 73, since it is "convenient" that he, as one of the trustees to whom the only valuable asset of the deceased has been conveyed, should undertake the administration.

He referred to *Farrell v. Brownbill* (1).

THE PRESIDENT (SIR JAMES HANNEN).—There is no doubt that I have power under 20 & 21 Vict. c. 77. s. 73 to make the grant to Mr. Stacey, and I think it expedient that I should exercise that power. I assume that the eldest son will renounce administration on behalf of the minors, and then the matter so stands, that no one who is entitled to the grant is willing to take it. It therefore seems "convenient" that I should grant the present application, but justifying security must be given.

Solicitors—Ellis & Ellis.

PROBATE.

1881.

Dec. 7, 21.

WATSON v. WATSON AND
OTHERS.

Will—Construction—Life Estate—Gift to two and "to the survivor for her sole use and benefit during her or their natural lifetime"—Intestacy as to Reversion.

The testatrix bequeathed the whole of her property to her two sisters, and her will concluded with the following words: "And in the case of the demise of either the said A. C. or the said J. C. I do hereby bequeath the same, all and every portion of the same property to the survivor for her sole use and benefit during her or their natural lifetime." The testatrix named no executors and no residuary legatee:—Held, that the two sisters of the testatrix took only a life estate, and that there was an intestacy as to the reversion.

Sarah Clarke, formerly of Lincoln, spinster, died on the 7th of August, 1869, having on the 15th of March, 1851, executed a holograph will, which was in the following words: "Through the goodness of God, I, Sarah Clarke, of the parish of St. Peter-at-Gowts, Lincoln, having become possessed of property in the present possession of several different persons, do hereby bequeath the same and all and every portion of it to my dearly beloved sisters Anne Clarke, spinster, of the parish of St. Peter-at-Gowts, and Jane Clarke, spinster, of the said parish of St. Peter-at-Gowts; and in the case of the demise of either the said Anne Clarke or the said Jane Clarke, I do hereby bequeath the same, all and every portion of the same property to the survivor for her sole use and benefit during her or their natural lifetime. This is the last will and testament of me, Sarah Clarke. Signed this 15th day of March, in the year of our Lord, 1851." The will was duly attested by two witnesses.

No executor having been named in the will, letters of administration with the will annexed were, on the 30th of June, 1870, granted to Anne Clarke, as natural and lawful sister and one of the next-of-kin of the deceased.

Anne Clarke died unmarried on the 27th

(1) 3 Sw. & Tr. 467; 33 Law J. Rep. Prob. & M. 185.

Watson v. Watson, Prob.

of November, 1880, having on the 3rd of March, 1870, duly executed a will by which she appointed her nephew Henry Watson her sole executor.

Jane Clarke, the other sister of the deceased testatrix, died unmarried on the 25th of September, 1871, having on the 3rd of March, 1870, duly executed a will, whereby she appointed the said Henry Watson her sole executor.

Probate of the respective wills of Jane and Anne Clarke had been in due course granted to the said Henry Watson.

At the time of the death of Sarah Clarke the persons entitled in distribution were her three sisters, Anne Clarke, Jane Clarke and Susannah Watson (widow), her three brothers, Thomas Clarke (since deceased), Edward Clarke and George Toynbee Clarke, Thomas Joseph Clarke, Walter Percy Clarke and Fanny Turnbull, children of Joseph Clarke, a deceased brother of the testatrix, and John Edward Wakefield Clarke, son of Henry Clarke, another deceased brother.

On the 22nd of March, 1881, an application was made for a grant of administration *de bonis non* of the effects of Sarah Clarke to Henry Watson, as sole executor of Jane Clarke and Anne Clarke, her universal legatees. The application was made with the consent of Edward Clarke and Susannah Watson, George Toynbee Clarke being a lunatic not so found by inquisition.

The President of the Division, holding that it would be necessary for him to decide the question whether, on the deaths of Jane and Anne Clarke, there was an intestacy as to the reversion, directed that the motion should stand over that all the parties interested might be served with notice of the application.

The case came before the Court again on the 22nd of March, when all the parties, except John Edward Wakefield Clarke (who was separately represented) and George Toynbee Clarke (who had been served but did not appear), consented to the application made on behalf of Henry Watson. It was ultimately arranged that, in order to obtain the opinion of the Court as to the proper construction of Sarah Clarke's will, a writ should be issued on behalf of

Henry Watson, all the parties interested in distribution being cited.

The plaintiff in his statement of claim alleged that the deceased Sarah Clarke had nominated her sisters Anne Clarke and Jane Clarke universal legatees, and he claimed a declaration to that effect for a grant of letters of administration *de bonis non* to himself as her executor.

The defendant John Edward Wakefield Clarke in his statement of defence and counter-claim alleged that Anne Clarke and Sarah Clarke had been appointed universal legatees for life only, and that there was an intestacy as to the residue; and he claimed a declaration to that effect, and a grant of letters of administration *de bonis non* to himself as lawful nephew of the deceased and one of the persons entitled in distribution.

The defendants Edward Clarke and Susannah Watson in their statement of defence also alleged that there was an intestacy as to the residue, and claimed a grant of letters of administration *de bonis non* to themselves as next-of-kin.

The other defendants filed no statement of defence.

The action came on for hearing on the 7th of December, 1881, before the President, without a jury. All the facts were admitted, and the only question was as to the construction of the will.

Inderwick, Q.C., and *Pritchard*, for the plaintiff.

Searle, for the defendant John Edward Wakefield Clarke.

Bayford, for the other defendants.

The following cases were referred to: *Slade v. Milner* (1), *Cambridge v. Rous* (2), *Ommaney v. Bevan* (3), *Adamson v. Adamson* (4), *Clark v. Lubbock* (5), *Home v. Pillans* (6), *Howard v. Howard* (7), *Skenk v. Andrews* (8), *In the goods of*

- (1) 4 Madd. 144.
- (2) 8 Ves. 12.
- (3) 18 ibid. 291.
- (4) 19 ibid. 416.
- (5) 1 You. & C. 492.
- (6) 2 Myl. & K. 15.
- (7) 21 Beav. 553.
- (8) 4 Kay & J. 405.

Watson v. Watson, Prob.

Bloomfield (9), *In the goods of Cadge* (10), *In the goods of O'Loughlin* (11), *In the goods of Sidebottom* (12) and *In the goods of Dixon* (13).

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Dec. 21).—In this case it is necessary to determine the construction of a will, the testatrix having been doubtless ignorant of the exact meaning of the technical language which she used. I feel some difficulty in giving a satisfactory meaning to her words; but, having looked at the cases cited, I have come to a conclusion. The testatrix leaves her property to her sisters Anne Clarke and Jane Clarke, and says, "In case of the demise of either . . . I do hereby bequeath the same, all and every portion of the same property to the survivor for her sole use and benefit during his or their natural lifetime." It is not necessary for me to go through the cases which were cited, because the effect of them can only be to establish the now accepted general rule, which is expressed in the 48th chapter of *Jarman on Wills* so clearly that I think it better to read the passage than to put it in any words of my own: "Where a bequest is made to a person with a gift over in case of his death, a question arises whether the testator uses the words 'in case of' in the sense of 'at' or 'from,' and thereby as restrictive of the prior bequest to a life interest—that is, as introducing a gift to take effect on the decease of the prior legatee under all circumstances, or with a view to create a bequest in defeasance of, or substitution for, the prior one in the event of the death of the legatee or some contingency. The difficulty in such cases arises from the testator having applied terms of contingency to an event of all others the most certain and inevitable, and to satisfy which terms it is necessary to connect with death some circumstance or association with which it is contingent.

(9) 81 Law J. Rep. Prob. & M. 119.

(10) Law Rep. 1 P. & D. 543.

(11) 89 Law J. Rep. Prob. & M. 53; Law Rep. 2 P. & D. 102.

(12) 41 Law J. Rep. Prob. & M. 23; Law Rep. 2 P. & D. 365.

(13) 47 Law J. Rep. P., D. & A. 57; Law Rep. 4 P. D. 81.

That circumstance is naturally the time of its happening; and such time where the bequest is immediate (that is, in possession) necessarily is the death of the testator, there being no other period to which the words can refer." The cases cited only establish this rule, but none of them present the difficulty which arises in this case from the concluding words, "during her or their natural lifetime." Some other cases, the effect of which was to shew that the words were to be taken as meaning "for her separate use," were referred to, but these give no assistance in determining the meaning of the concluding words. I have come to the conclusion that the words "during her or their natural lifetime" cannot be rejected nor be limited in their effect by any reasonable transposition, if that were allowable. Since they cannot be rejected, I think they must be construed as indicating that the estate must be taken by these persons for life only. Undoubtedly the words are not strictly grammatical, but their effect seems to me to be to give the bequest the general meaning that each of the sisters of the testatrix shall take for her life. The result is, that I am of opinion that the testatrix gave only a life estate to her sisters, and that there is an intestacy as to the reversion. Administration with the will annexed will therefore go to the next-of-kin, and all parties will have their costs out of the estate.

Solicitors.—Helder, Roberts & Gillett, agents for H. Watson, Middlesborough, for plaintiff; Taylor, Hoare & Taylor, agents for Burton & Scorer, Lincoln, for defendants.

DIVORCE. }
1881. } HASWELL v. HASWELL AND
Dec. 13, 21. } GILBERT.

Licence—Marriage—Misdescription.

A marriage by licence is not invalidated through the husband having been, by mistake, described in the licence as having two additional Christian names.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent.

Haswell v. Haswell, Div.

Neither the respondent nor the co-respondent had filed an answer, and the case was heard during the Trinity sittings before the President of the Division without a jury.

The adultery was clearly proved, but a question arose as to the validity of the marriage.

The parties were married by licence at Christ Church, Marylebone, London, on the 21st of October, 1869.

The petitioner's name was "Robert Haswell," but he was described in the licence and register as "Robert Luney Wallace Haswell." There was no issue of the marriage.

The case was adjourned for the production of some evidence to explain the discrepancy.

T. L. Roberts (on Dec. 13), for the petitioner, read an affidavit by the petitioner, in which it was stated that the licence had been obtained by his wife, who then believed that he bore the same names as his son by a former marriage—"William Luney Wallace Haswell."

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Dec. 21).—In this case a question arose whether the marriage was good, there being an error in the name of the husband. The explanation given is not altogether satisfactory, but as this was a marriage by licence, I think it is not invalidated by the inaccuracy of the description. I therefore hold that the marriage has been proved, and I grant a decree *nisi* (1).

Solicitors—Wild, Browne & Wild, for petitioner.

ADMIRALTY. }

1882.

Jan. 24. }

THE HELENSLEA.

Practice—Writ—Order II. rules 3 and 4.

A writ, in personam, issued for service within the jurisdiction, will not be set aside, though the defendant has been erroneously described therein as resident within the jurisdiction.

This was an application to set aside a writ *in personam* in an action of collision. The defendant was described in the writ as of the City of London, whereas, in fact, he resided at Dundee, in Scotland. The collision in respect of which the writ was issued occurred off the entrance of Queens-town Harbour, on the coast of Ireland.

Phillimore, in support of the motion.—The writ would not have been issued if the proper address of the defendant had been given. The writ is not in the form prescribed by Order II. rule 3, where the country in which the defendant lives is to be given.

Butt, Q.C., and *Myburgh, contra*.—The plaintiffs intended to serve the writ if the defendant came within the jurisdiction. The description of the address of the defendant does not make the writ bad. The writ is not for service out of the jurisdiction.

SIR R. J. PHILLIMORE.—I cannot accede to this motion. The writ was not, it appears, issued with any intention of serving it out of the jurisdiction of the High Court; and when I look at the form of the writ, I find there is nothing on the face of it which can be said to make it invalid. There is no reason why the plaintiffs should not wait until the defendant comes within the territorial jurisdiction of the Court, though at the time when the writ was issued he was not resident in the City of London, and though he has been erroneously so described. The motion must be dismissed with costs.

Solicitors—T. Cooper & Co., for plaintiffs; Gregory & Co., agents for Hill, Dickinson & Lightbound, Liverpool, for defendant.

(1) See *Beran v. McMahon*, 2 Sw. & Tr. 230; 30 Law J. Rep. Prob. & M. 61.

ADMIRALTY. }
1882. }
Feb. 14, 21. }

THE GUY MANNERING.

Damage by Collision — Compulsory Pilotage—Suez Canal Regulations.

A collision occurred in the Suez Canal between two steamers, the *W. H. and G. M.*, and was caused solely by the negligence of the pilot on board the *G. M.* By article 4 of the Regulations for the navigation of the Suez Canal, every ship above 100 tons is bound to take on board one of the company's pilots; but by the same article the responsibility for the management of the ship rests solely on the captain. In an action against the *G. M.*,—Held, that, under the circumstances, her owners were not exempt from liability on the ground of compulsory pilotage.

This was a Special Case, stated by the consent of the parties for the opinion of the Court. The point for argument and the facts appear from such Case, which was as follows:—

1. This is an action for damages by collision, brought by the owners of the British screw steamship *Wistow Hall*, of 1,729 tons register, against the British screw steamship *Guy Mannering*, of 2,817 tons register, whose owners have appeared, and are the defendants.

2. The collision occurred on the afternoon of the 4th of December, 1880, in the Suez Canal. The *Wistow Hall* and the *Guy Mannering* were both proceeding in the same direction—namely, towards Suez, the *Wistow Hall* being the headmost vessel. The *Wistow Hall* had to stop her way in order to allow some vessels coming from Suez to pass, and it was the duty of the *Guy Mannering* to stop her way also, so as not to run into the *Wistow Hall*; but the proper measures were not taken in time on board the *Guy Mannering*, and before her way was stopped she forged ahead into the *Wistow Hall*, so that her stem cut into the stern of the *Wistow Hall*, and did the damage complained of.

3. The facts are, that upon the occasion in question the engines of the *Guy Mannering* were stopped, but she still went on ahead with the way she had had previously; that the master of the *Guy Mannering*

saw that his vessel was approaching too close to the *Wistow Hall* and informed the pilot of it, and suggested to him that the engines should be moved astern. The pilot, however, refused to give the order to the engines; whereupon the master, having more than once suggested to the pilot to give the order, gave it himself, but too late, and though it was obeyed, the collision ensued. The plaintiffs admit that the collision was solely caused by the pilot's negligence.

4. The defendants admit that this collision was caused by the bad navigation of the *Guy Mannering*, and that her master and crew were their servants; but they claim to be exempt from liability for it, on the ground that they were compelled by the law in force in the Suez Canal, to which all vessels passing through the said canal are subject, to give up charge of the navigation of their ship to one of the pilots employed by the Suez Canal Company, whom they had taken on board, and on the ground that the collision was entirely occasioned by his bad navigation.

5. The provision for the employment of pilots in the Suez Canal is contained in article 4 of the "Regulations for the Navigation of the Suez Maritime Canal," which article is as follows:—

"Every vessel measuring more than one hundred (100) tons gross must take on board a company's pilot for the whole length of the canal, who will indicate all particulars concerning the passage through. The captain is held responsible for all groundings and accidents of whatsoever kind resulting from the managing and manœuvring of the ship.

"Pilots place at the disposal of captains of vessels their experience and practical knowledge of the canal, but as they cannot be specially acquainted with the defects or peculiarities of each steamer and her machinery in stopping, steering, &c., the responsibility as regards the management of the ship devolves solely upon the captain."

6. The plaintiffs admit that these regulations are lawfully in force, and that the pilot taken on board the *Guy Mannering* was a company's pilot, and was on board her by virtue of these regulations.

7. Copies of the statement of claim and statement of defence and of the regula-

The Guy Mannering, Adm.

tions for the navigation of the Suez Maritime Canal are annexed to and are to be taken as part of this Special Case. [The pleadings contained the facts as set forth above, with the usual allegations of negligent navigation.]

8. The question for the opinion of the Court is, whether the defendants are liable or are exempt from liability for the aforesaid bad navigation of their ship.

9. If the defendants are liable, judgment is to be entered for the plaintiffs with costs, and with the usual order for reference of the damages to the Registrar and merchants.

10. If the defendants are exempt from liability, judgment is to be entered for them, with or without costs, or with such portion of the costs as to the Court may seem just.

Phillimore, for the plaintiffs.—My contention is that the defendants are not exempt from liability. The pilot in this instance was not a person having authority over the navigation of the ship, he was simply an adviser. Sections 376 and 378 of the Merchant Shipping Act, 1854, shew that this was not the kind of pilot in respect of whose acts exemption could be claimed by the owners of the ship. He referred to *The Halley* (1).

Butt and Nelson, for the defendants.—The defendants are not liable. Article 4 of the Regulations set out in the Case is *ultra vires*, because the company are authorised by the firman of the Porte to levy a rate for pilotage, and to charge pilotage dues, and correspondingly to provide pilots, whom they compel ships to take on board. When so on board the pilot cannot be held to be the servant of the owner, and the latter cannot be liable for his wrongdoing, even though the company state that all responsibility is to be on the master of the ship. Next, the Case shews that the pilot was *de facto* in charge, and that the collision occurred through his negligence—*Lucy v. Ingram* (2).

Phillimore, in reply.

Cur. adv. vult.

(1) 37 Law J. Rep. Adm. 33; Law Rep. 3 P.C. 193.
 (2) 6 Mee. & W. 802; 9 Law J. Rep. Exch. 196.

SIR R. J. PHILLIMORE.—This case comes before me in the form of a Special Case. It is an action for damage by collision.

The plaintiffs are the owners of the British screw steamship *Wistow Hall*; and the defendants are the owners of the British screw steamship *Guy Mannering*.

The collision took place on the 4th of December, 1880, in the Suez Canal. The *Guy Mannering* had on board one of the regular Suez Canal Company's pilots, and the damage was caused by her engines not having been moved astern in time. The pilot refused to give the order to move astern, although it was more than once suggested to him by the master, until too late to avoid the collision.

It is admitted on both sides that the collision was caused by the negligence of the pilot, and that the master and crew were the servants of the defendants; but the defendants claim exemption from liability on the grounds that they were compelled by the laws in force on the Suez Canal to give up the charge of the navigation to one of the pilots employed by the Suez Canal Company, and that the collision was entirely caused by his bad navigation. The provision for the employment of pilots in the Suez Canal is contained in article 4 of the Regulations for the navigation of that canal. [The learned Judge here read article 4.] The defendants maintain that inasmuch as the pilot was taken on board by compulsion of law, the master was not responsible for the bad navigation of the ship which caused the collision. It must be remembered that this exemption from liability is founded upon the principles that the pilot is taken by compulsion of law, and that to him is committed the sole charge of the ship. These at least are the positions of British law which were relied upon by the defendants; but in the present case it is expressly declared in the 4th article of the Suez Canal Regulations that the duty of the pilot is to act as the adviser of the captain in matters requiring local and practical knowledge of the canal, but that the responsibility as regards the management of the ship devolves solely upon the captain.

This regulation appears to me to alter the usual relations of the master and pilot,

The Guy Mannering, Adm.

and to take away the reasons of the law upon which the exemption rests. It has been argued on behalf of the defendants that this regulation is *ultra vires*, and therefore bad, and much has been said upon article 17 of the Act of Concession of the 5th of January, 1856, which authorises the company to establish and levy pilotage and other dues; and it was urged that these "pilotage" dues must mean dues to be levied in respect of persons who should exercise all the usual functions of a pilot according to British law, and should take the entire charge of the navigation of the ship.

I am unable to assent to these propositions. I am of opinion that I must assume that these canal regulations were made by competent authority, and were not *ultra vires*; and it may be remarked in passing that if they were *ultra vires* the pilot would not have been taken on board by compulsion of law.

I have only the 14th and 17th articles of the Act of Concession of 1856 before me, from these I cannot infer any legal disability on the part of the company to frame the regulations in questions.

Upon the whole, I am of opinion that the defendants are liable for the bad navigation of the ship, and the damages consequent thereupon, and I give judgment for the plaintiffs.

Solicitors—Pritchard & Sons, agents for Bateson, Wright & Co., Liverpool, for plaintiffs; Lowless & Co., for defendants.

DIVORCE. }
1882. } DAGG v. DAGG AND SPEAKE.
Jan. 19. }

Desertion—Agreement to Live Separate.

The petitioner, previous to his marriage, had persuaded his wife to sign an agreement that they should not live together, and they never did so. A month after the marriage the wife was delivered of a child of which the petitioner was the father, and towards the support of which he paid her half-a-crown a week for several years. He afterwards discovered that his wife was living in adultery with another man, and

he thereupon discontinued the allowance and commenced a suit for dissolution of the marriage:—Held, that the petitioner had been guilty of desertion and was not entitled to relief.

This was a husband's suit for dissolution of marriage on the ground of his wife's adultery with the co-respondent.

The parties were married in 1867, the petitioner being then a porter, and the respondent a cook, in a hydropathic establishment. A short time before the marriage, the respondent being then with child by the petitioner, the latter induced the former to sign the following agreement:—

"This is to certify that whereas the undersigned parties do agree that they will marry, and that only to save the female of us from shaming her friends or telling a lie, and that the said marriage shall be no more thought of except to tell her friends that she is married (unless she should arrive at the following accomplishments, namely, piano, singing, reading, writing, speaking and deportment); and whereas these said accomplishments have in no way been sought after (much less mastered), therefore the aforesaid marriage shall be, and is, null and void; and whereas we agree that the male of us shall keep his harmonium in the aforesaid female's sitting-room, and agree that it shall be there no more than four months, and that from that time the aforesaid and undersigned shall be free in every respect whatsoever of the aforesaid female, as witness our hands, &c., Catherine L. H. Jeffries, William Pritchard Dagg."

The body of the document was in the petitioner's hand-writing.

About a month after the marriage the respondent was delivered of a child at a lodging which had been taken for her by the petitioner. He had no further intercourse with her, but for several years he paid her half-a-crown a week towards the support of the child. He afterwards discovered that his wife was living in adultery with the co-respondent, and he then discontinued the allowance and commenced the present suit.

The case was tried before the President of the Division without a jury.

Searle, for the petitioner.

Dagg v. Dagg, Div.

THE PRESIDENT (SIR JAMES HANNEN).—The petition must be dismissed. The agreement was obtained by the husband without the real concurrence of the wife, and without justification. Knowing her frailty, it was his duty when he became her husband not to have left her to those chances of falling to which, abandoned as she was by him, she must have been exposed. It is true that from the birth of the child he allowed her half-a-crown a week, but that was not more than the parish authorities could have compelled him to contribute for the child's maintenance. He withdrew from her the protection to which, as his wife, she was entitled at his hands, and it is not to be wondered at that she fell with another man. He deserted her from the time of the child's birth, and that desertion is probably the cause of the life which she is now leading.

Solicitors—Newman, Stretton & Co., agents for Southall & Co., Birmingham, for the petitioner.

ADMIRALTY.

1882.

Feb. 1.

THE MAC.

Salvage—Jurisdiction of Justices of the Peace—Merchant Shipping Act, 1854, ss. 458 and 460.

In order to give justices jurisdiction in respect of a salvage claim, there must be evidence that the vessel to which the services were rendered was used in navigation.

This was an appeal from a decision of the Justices of the peace for the borough of King's Lynn, whereby they awarded the sum of 50*l.* as salvage to the master and crew of the smack *Saucy Polly*, for services to a hopper barge, the *Mac*, on the night of the 14th of October, 1881.

It appeared from the evidence attached to the notice of appeal, that the *Saucy Polly* was in the Wash, about three miles from the Boston shore, when those on board perceived the *Mac* drifting seaward, and after they had got on board and

anchored her, the *Saucy Polly* eventually towed her into Boston. At the time when the *Mac* was seen it was blowing heavily from the north-west. According to the evidence of the owner of the *Saucy Polly*, the barge "had a bow, stern and rudder," and was "steerable." The master of the *Saucy Polly* stated that the barge "would not steer alone, the rudder would act if (the barge was) propelled by steam." Mr. Affleck, engineer, stated that the length of the *Mac* was 73 feet, width 19 feet. That she was constructed of iron plates three-sixteenths of an inch thick, riveted throughout, air-tight compartments at side, cabin at each end. Hopper fitted with lifting doors and apparatus complete, and worth then about 600*l.*, and used for dredging purposes, generally towed, and would drive with wind and tide. The evidence for the owner of the *Mac*, the appellant, was wholly directed to the question as to whether or not the barge was in danger. The first three of the appellant's grounds of appeal were:—

1. That the justices had no jurisdiction to hear and adjudicate upon the claim.
2. That there was in the circumstances no such jurisdiction in any justice.
3. That the hopper barge was not a ship or boat, and was not in distress or a wreck. The three remaining grounds were not material to the point of the appeal.

Phillimore, for the appellant, argued that the *Mac* was not a ship or boat within the meaning of 17 & 18 Vict. c. 104. s. 458, and therefore that the magistrates had no jurisdiction.

Bucknill, contra.

SIR ROBERT PHILLIMORE.—I do not see my way in this case to hold that the Court below had jurisdiction to award salvage against the appellants. In my opinion, the mud hopper barge, to which the salvage services were rendered, was not a ship or boat within the meaning of those words in the 458th section of the Merchant Shipping Act, 1854. It appears by the evidence taken in the Court below, that she was simply a vessel not propelled by oars, but no evidence was produced from which I can draw the inference that she was used in navigation.

The Mac, Adm.

I must therefore allow the appeal, and reverse the decision appealed against. It must be understood that I make this decision on the precise ground that the statute requires that the vessel should be used in navigation, of which, as I have said, I can find no evidence in this case.

Solicitors—Whyte, Collisson & Prichard, agents for Henry Snaith, Boston, for appellant; Tompson, Pickering & Co., agents for Archer & Archer, King's Lynn, for respondent.

PROBATE. } *In the goods of ELIZABETH*
1882. } *WENSLEY.*
Jan. 24. }

Administration—Intestacy—“Special Circumstances”—20 & 21 Vict. c. 77. s. 73.

A, the wife of B, was entitled at the time of her death to a share in the residuary estate of P, subject to certain life interests. There had been no settlement upon the marriage, and A left no will. B died, without taking out letters of administration to A, and having made a will, which was proved by his daughter C, as sole executrix. He was at the time of his death indebted to the estate of P. A's share in the residuary estate of P having been paid into the Chancery Division, D, who was also entitled to a share in the residuary estate, was desirous of taking proceedings to render A's share liable for B's debt to the estate. C was cited to take out administration to the estate of A, but refused to do so.

The Court made a grant to D, under the 20 & 21 Vict. c. 77. s. 73, of letters of administration of the personal estate of A.

Elizabeth Wensley the elder died intestate in 1844, leaving her husband, John Wensley, surviving her. The deceased was entitled, under the will of John Pring, to one-seventh share of his residuary estate upon the determination of certain life estates.

John Wensley did not take out letters of administration to his wife's estate. He died in 1871, and his will was proved by his daughter, Elizabeth Wensley the younger, as sole executrix. There had been no settlement upon his marriage.

The sum to which Elizabeth Wensley the elder was entitled under the will of John Pring was afterwards paid into the Chancery division.

Susannah Pring, being entitled to a share in the residuary estate of John Pring, deceased, to whose estate John Wensley was at the time of his death indebted in the amount of 886*l.*, was about to commence proceedings in the Chancery division to make the share of Elizabeth Wensley the elder in the residuary estate of John Pring answerable for her husband's debt to that estate, and desired for that purpose to obtain a representation of the estate of Elizabeth Wensley the elder.

Elizabeth Wensley the younger, as executrix of John Wensley, had been cited to take out letters of administration to the estate of her mother, but had refused to do so.

C. A. Middleton moved, under the 20 & 21 Vict. c. 77. s. 73, for a grant of letters of administration of the personal estate of Elizabeth Wensley the elder to Susannah Pring. He referred to *In the goods of Williams* (1).

THE PRESIDENT (SIR JAMES HANNEN).—The person entitled to represent the estate of Elizabeth Wensley the elder refuses to act because she has no interest in it, but some person ought to be appointed to take out letters of administration, so that the money due from the estate may be recovered. I therefore think that the case is one where, in the words of 20 & 21 Vict. c. 77. s. 73, “it is necessary or convenient, by reason of the insolvency of the estate . . . or other special circumstances, to appoint some person to be administrator of the personal estate of the deceased other than the person who would have been entitled to the grant.” I therefore grant the application.

Solicitor—T. H. Strangways, agent for Turner & Poole, Taunton, for applicant.

(1) 39 Law J. Rep. Prob. & M. 48; Law Rep. 2 P. & D. 81.

DIVORCE. }
 1882. } ROSS v. ROSS AND FORSYTH.
 Jan. 31. }

Petition—Settlements—Absence of Petitioner—Signature by Solicitor.

A petition for variation of settlements ought to be signed by the petitioner. Where, however, the petitioner was engaged on military service in India, the Court allowed the petition to be signed by the petitioner's solicitor.

In this case the petitioner had obtained a decree for dissolution of marriage on the ground of his wife's adultery.

It appeared from an affidavit that the petitioner was engaged on military service in India, and had sent instructions to his solicitors to present a petition for variation of settlements.

Bayford, for the petitioner, moved the Court to dispense with the petitioner's signature to the petition, or to allow it to be signed by his solicitor. It is no doubt the practice to require that a petition for variation of settlements should be signed by the petitioner, but there is no special rule rendering such signature necessary.

THE PRESIDENT (SIR JAMES HANNEN).
 —The practice of requiring the petitioner's signature to a petition for variation of settlements as a proof that the petition is his or her act is a reasonable one; but upon the facts disclosed in the affidavit I will allow the petition to be signed by the petitioner's solicitor.

Solicitors—Lawrence, Graham & Long, for petitioner; Ravenscroft, Hills & Woodward, for respondent.

ADMIRALTY. }
 1882. } THE RORY.
 Feb. 28. }

Practice — Particulars — Damage to Cargo.

The Court will not, as a general rule, order a plaintiff to give particulars of the alleged defective condition of the ship in an action for damage to cargo.

This was an appeal against an order of the Registrar, made at chambers, in an action for damage to cargo lately laden on board the steamship *Rory*, caused, as the plaintiffs, the owners of the cargo, alleged in the statement of claim, by the negligence of the servants of the defendants, the owners of the *Rory*, and by the defective condition of their ship. The order appealed against was as follows:—"It is ordered that the plaintiffs do deliver to the defendants particulars of the defective condition of the vessel *Rory*, rendering her not reasonably fit to carry her cargo, as alleged in the 8th paragraph of the statement of claim; also particulars of the loss and expenses incurred by them, as alleged in the 9th paragraph of the statement of claim."

Butt, Q.C., in support of the appeal.—These particulars must necessarily be within the knowledge of the defendants. We may prove them by cross-examination; and further, it has always been contrary to the practice of the Court to grant such particulars. He referred to *The Freedom* (1).

Bruce, contra.—The defendants are entitled to know the exact matters on which the plaintiffs rely. If they cannot furnish any particulars, it may lead to the part of the claim which refers to the defective condition of the ship being struck out altogether. These particulars would be given, as a matter of course, in the Queen's Bench Division. By the Judicature Acts it was intended to assimilate the practice of the several divisions.

SIR R. J. PHILLIMORE.—I am of opinion that the Registrar's order must be varied.

(1) 38 Law J. Rep. Adm. 25; Law Rep. 2 Ad & E. 846.

The Rory, Adm.

I do not consider that the defendants are entitled to obtain from the plaintiffs particulars of the defective condition of their ship. The appeal must therefore be allowed with costs.

Solicitors—T. Cooper & Co., for plaintiffs; J. Neal, for defendants.

DIVORCE }
1882. } L. v. W. (otherwise L.).
Jan. 13. }

Nullity of Marriage—Impotence—Possibility of Cure.

In a husband's suit for a declaration of nullity of marriage, on the ground of his wife's incapacity, it appeared that the parties had cohabited irregularly during two years and eight months after the marriage, but that the respondent had always refused to allow the petitioner to attempt to consummate the marriage, alleging that she was not fit for it and had no sexual desire. The medical evidence shewed that sexual connection with the respondent was impossible, but that she might probably be cured by submitting to an operation, which would involve very little risk to her life. She had refused to submit to any operation:—Held, that the petitioner was entitled to a decree of nullity of marriage.

This was a husband's petition for a declaration of nullity of marriage, on the ground of his wife's physical incapacity. The respondent had not appeared.

The parties were married on the 29th of August, 1876, the petitioner being then twenty-seven years of age, and the respondent twenty-three. On that occasion the latter refused to go home with her husband, but a week afterwards they slept together at her father's house for three or four nights. She then refused to allow the petitioner to attempt to consummate the marriage, and threatened to leave the house.

The parties afterwards occupied separate lodgings, but slept together about once a fortnight. The petitioner made no fur-

ther attempt at consummation, the respondent alleging that she was not fitted for it, and had no sexual desire. The parties finally separated in April, 1879.

In February, 1879, the respondent had been examined by a medical man, who now deposed that she was suffering from *vaginismus*, and that her private parts were subject to a spasmodic affection. She consequently suffered pain if they were touched, and sexual intercourse with her was impossible. He, however, expressed an opinion that she could probably be cured by an operation, which would involve very little risk to her life.

On being informed of the result of the medical examination, the respondent had refused to submit to any operation, and she also refused to submit to an order of the Court for further inspection.

The case was tried before the President of the Division *in camera*.

Dr. Tristram, Q.C. (with him *Currie*), for the petitioner, referred to *D. v. A.* (1), *W. v. H.* (2), and *G. v. G.* (3).

THE PRESIDENT (SIR JAMES HANNEN).—In this case the man is capable, and it is proved to my satisfaction, by the conduct of the parties during the last three years and by the medical testimony, that the woman is incapable. The ends of marriage have not been attained, and it is therefore desirable that the tie between the parties should be put an end to. The difficulty might perhaps be overcome if the respondent would consent to undergo an operation, which would probably be successful; but the Court cannot compel her to submit to this, and the man can only be expected to take all reasonable means to persuade her to do so. He has done this, but she has distinctly refused. I therefore pronounce a decree *nisi* for nullity of marriage.

Solicitors—Burton, Yeates & Hart, for petitioner.

(1) 1 Robert. 202.

(2) 2 Sw. & Tr. 240; 30 Law J. Rep. P.M. & A. 73.

(3) 40 Law J. Rep. Prob. & M. 83; Law Rep. 2 Prob. & D. 287.

DIVORCE. }
 1881. } JAMES v. JAMES AND SMYTH.
 Nov. 22. }

Celebration of Marriage—British Territory—Roman Catholic Church.

A marriage celebrated between British subjects according to the rites of the Roman Catholic Church in a country subject to British dominion, but where there is no Established Church, is valid.

This was a husband's petition for a dissolution of marriage on the ground of his wife's adultery with the co-respondent. Neither the respondent nor the co-respondent had filed an answer. The case was heard before Sir Robert Phillimore without a jury.

The adultery was clearly proved, and the only question was as to the validity of the marriage.

The parties, both of whom were British subjects, were married at Bassein, British Burmah, on the 2nd of March, 1863, by a Roman Catholic priest, in accordance with the rites of the Roman Catholic Church, there being no Established Church in British Burmah.

Searle (with him *Sutton*), for the petitioner, referred to *Lautour v. Teesdale* (1).

SIR ROBERT PHILLIMORE.—I am satisfied with the evidence of the marriage, and I grant a decree *nisi*.

Solicitors—James, Son & James, for petitioner.

DIVORCE. }
 1882. } PENNY v. PENNY, JOHNSON
 Jan. 24. } AND SABINGIE.

Co-respondent—Dispensing with—Adultery—Persons unknown.

If a husband's petition for a dissolution of marriage alleges adultery with A and B, and also with divers persons unknown, leave must be obtained to dispense with making such unknown persons co-respondents.

This was a husband's suit for a dissolution of marriage. The petitioner alleged that the respondent had committed adultery with both the co-respondents and also with divers persons unknown to the petitioner.

The Registrar had declined to give directions as to the mode of trial until an order should have been obtained to dispense with making the persons who were unknown to the petitioner co-respondents.

C. A. Middleton, for the petitioner, moved for directions as to the mode of trial, or for leave to dispense with making any other persons co-respondents. Such leave would seem to be unnecessary when there are other co-respondents on the record.

THE PRESIDENT (SIR JAMES HANNEN).—If adultery with a person unknown is relied upon, I do not think it makes any difference that another person has been also charged and has been served with a citation and petition. In the present case I will dispense with making any additional co-respondents.

Solicitors—Chester, Mayhew, Broome & Griffiths, agents for Farrar & Hall, Manchester, for petitioner; Bower & Cotton, agents for W. Bylance, Manchester, for respondent.

ADMIRALTY. }
1882. }
April 18, 25. }

THE VESTA.

Collision — Compulsory Pilotage — Foreign Vessel—6 Geo. 4. c. 125. s. 59—*Order in Council, 18th of May, 1854*—24 & 25 Vict. c. 47. ss. 10, 11 and 14.

Pilotage is compulsory in the Thames on foreign vessels carrying passengers and bound for a port between Boulogne and the Baltic, and such vessels are not exempt from compulsory pilotage by virtue of the order in Council of the 18th of May, 1854, which order enlarges the operation of 6 Geo. 4. c. 125. s. 59, in regard only to British vessels. A pilotage rate is not a due within the meaning of 24 & 25 Vict. c. 47, and therefore is not abolished by that Act.

This was a question of law arising on the pleadings in an action against the ship *Vesta* for damage by collision. The question came before the Court under the following order made by virtue of Order XXXIV. rule 2: "It is ordered that the following question of law be argued on Tuesday, the 18th of April—namely, whether, assuming the allegations in paragraphs 1, 2, and 3 of the statement of defence to be true, pilotage was, as alleged in paragraph 10, compulsory by law on the *Vesta*." The material facts were that the *Vesta* was a German ship of 623 tons, carrying passengers and cargo, and bound from London to Hamburg, such port being between Boulogne and the Baltic. The collision took place in Blackwall Reach in the river Thames; a pilot was on board of the *Vesta*, and the defendants, the owners of the *Vesta*, alleged that the employment of a pilot was compulsory by law on the *Vesta*, and that therefore they were exempt from liability in respect of the collision.

Phillimore and *Bucknill*, for the plaintiffs, argued that pilotage was not compulsory on the *Vesta*. First, it is admitted that by 17 & 18 Vict. c. 104. s. 353, the Acts and the orders in Council made prior to the passing of the Merchant Shipping Act, 1854, are still in force.

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Therefore the order in Council of the 18th of February, 1854 (1), which was an addition to 6 Geo. 4. c. 125. s. 59 (2), applies to the *Vesta*, and exempts her from being compelled to take a pilot, for it applies equally to British and foreign ships. Secondly, if the *Vesta* does not fall within this exemption, she is exempt by the operation of the Harbours and Passing Tolls Act, 1861 (3). Section 10 of that statute sweeps away all differential rates; in the schedule to that statute 59 Geo. 3. c. 54. s. 8, is mentioned, and the wording of this Act shews that pilotage rates are differential dues, and so must be swept away in the case of foreign ships, if English ships are not bound to pay them.

Butt, Q.C., and *Stubbs*, for the owners of the *Vesta*, argued that it was compulsory on her to take a pilot. First, because the order in Council of the 18th of February, 1854, was only meant to supply the omissions in the Act 6 Geo. 4. c. 125. s. 59, which, after exempting ships trading from and to various ports, states, "all such ships and vessels having British registers," and this qualification must apply also to the order in Council—*The Earl of Auckland* (4). Secondly, pilotage payments are not rates, they are payments for services rendered—see *The Hanna* (5)—and therefore the Harbours and Passing Tolls Act (3) cannot apply to them.

Phillimore in reply.

Cur. adv. vult.

(1) Order in Council, Feb. 18, 1854, exempts, *inter alia*, the masters of the following ships from the regulations as to compulsory pilotage, sub-section 2, "of ships and vessels trading to ports between Boulogne and the Baltic on their outward passages."

(2) 6 Geo. 4. c. 125. s. 59: "The master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers), and coming up by the North Channel, but not otherwise . . . shall and may lawfully, and without being subject to any of the penalties by this Act imposed, conduct or pilot his own vessel . . ."

(3) 24 & 25 Vict. c. 47. ss. 10, 11 and 14.

(4) *Lush*. 164.

(5) 36 Law J. Rep. Ad. 1; Law Rep. 1 Ad. & E. 283.

The Vesta, Adm.

SIR R. J. PHILLIMORE.—This was a case of collision between the sailing-barge *Audacious* and the screw steamship *Vesta*, which took place last September in the lower part of Blackwall Reach.

The defendant's ship the *Vesta* was a German vessel not having a British register, having on board passengers and cargo, and was bound from London to Hamburg.

It was admitted by both parties that the collision was due to the fault of the pilot on board the *Vesta*; and the only question for my decision is whether or not the pilot was taken on board by compulsion of law.

The plaintiffs contended that there was no such compulsion, and founded their argument on two grounds—

1. That previously to the passing of the Merchant Shipping Act, 1854, the *Vesta* would have been exempt under 6 Geo. 4. c. 125. s. 59, coupled with an order in Council of February 18, 1854.

It was admitted that section 353 of the Merchant Shipping Act, 1854, preserved all previously existing exemptions.

2. That pilotage dues or rates are dues or rates or duties within the meaning of the Harbour and Passing Tolls Act, 1861 (24 & 25 Vict. c. 47), which Act abolishes all differential dues; and that to impose pilotage on foreign vessels where it is not imposed on British would be to impose a differential due.

I will deal first with the contention of the plaintiffs, founded upon the Act of Geo. 4 and the order in Council. The Act 6 Geo. 4. c. 125. s. 59, provides as follows: [The learned Judge here read the section.]

In the clumsy and careless language of this section there are two important omissions—namely, no provision is made, first, for vessels trading outwards, to the ports between Boulogne and the Baltic; secondly, for vessels coming up by the south channels, the north being the only one mentioned.

The order in Council is entitled a "Regulation" for the extension of the exemptions from compulsory pilotage, now existing under the provisions of the 59th section of the Act 6 Geo. 4. c. 125, and it provides that the exemption from com-

pulsory pilotage shall be allowed to the masters of certain ships—namely: [The learned Judge here read the order in Council.]

The plaintiffs contend that the words ships and vessels mean all ships and vessels, foreign as well as British. It is somewhat strange that no judicial decision as to the meaning of these words should have been given, but such I am informed and believe is the case. If the plaintiffs' construction be right, the order in Council, which was evidently intended to remedy a defect, would have introduced a new one, inasmuch as the Court would be bound to hold that if a foreign ship were coming inwards and not outwards, she would not be exempt at all, the exemption in the order being expressly confined to vessels on their outward passages; the exemption does not exist under the 59th section of the Act of Geo. 4, which expressly relates to British ships alone.

In other words, according to this construction, by the joint operation of that section and of the order, a foreign ship would be liable to compulsory pilotage when coming in, and exempt when going out.

I am of opinion that this absurdity does not arise, and that this order does not apply to foreign vessels, but that the words "ships and vessels" must mean British ships and vessels, which alone are dealt with by the statute to which this order is subsidiary, and of which it is explanatory.

I think, moreover, that this was the opinion to which Dr. Lushington inclined in the case of *The Earl of Auckland* (4), and of *The Hanna* (5).

I now come to the second point relied upon by the plaintiffs—namely, that all differential dues are abolished by 24 and 25 Vict. c. 47, and that a pilotage due imposed on a foreign ship which is not imposed on a British ship would be a differential due, and therefore has ceased to exist.

The sections relied upon are the 2nd, 10th and 11th.

By the 2nd section the term differential duties includes any dues, rates or taxes levied on foreign ships, &c., which are not levied under like circumstances on British ships—and the plaintiffs contend

The Vesta, Adm.

that that term would include compulsory pilotage.

To this argument I cannot accede. In the first place, the Act of 24 & 25 Vict. clearly did not contemplate the subject of compulsory pilotage at all; and it would be a very forced construction of the statute to hold that any legislation on that subject was indirectly affected by it.

In the next place the subject seems already disposed of by Dr. Lushington's judgment in the case of *The Hanna* (5), already referred to.

In that case reliance was placed on the expression contained in a convention of commerce between this country and Sweden. Dr. Lushington, referring to the 6 Geo. 4. c. 125. s. 59, as shewing that the exemptions under that section could not apply to a vessel not having a British register, said:—

"But the plaintiffs would escape from this difficulty by invoking a convention of commerce and navigation made between this country and Sweden in March, 1826, that is to say, a few months before the passing of the 6 Geo. 4. c. 125. The 2nd section of the convention is as follows:—

"British vessels entering or departing from the ports of the kingdoms of Sweden and Norway, and Swedish and Norwegian vessels entering or departing from the ports of the United Kingdom of Great Britain and Ireland, shall not be subject to any other higher ship duties or charges than are or shall be levied on national vessels entering or departing from such ports respectively."

The plaintiffs contend that compulsory pilotage was a charge within the meaning of the above section of the convention, and consequently that, notwithstanding anything in the 59th section of 6 Geo. 4. c. 125, Norwegian vessels could not be subject to compulsory pilotage where British vessels were exempt. This view, however, seems to me untenable; the theory of the Legislature, whether right or wrong, must be taken to be that compulsory pilotage is not a charge upon vessels, but rather a regulation instituted for their benefit. With this opinion I entirely agree. I have considered the argument founded on the 59 Geo. 3. c. 54. It seems to me not to affect the question of

compulsory pilotage, though it may perhaps refer to pilotage dues, where the legal necessity to take a pilot does not exist.

Upon the whole I am of opinion that the plaintiffs have failed to establish their position that the *Vesta* was not under compulsion of law to employ a pilot, and I therefore pronounce for the defendants.

Solicitors—J. A. & H. E. Farnfield, for plaintiffs; Stokes, Saunders & Stokes for defendants.

ADMIRALTY. }
1882. } THE STORNOWAY.
March 21, 22. }

General Ship—Charter-party—Lien for Freight—Notice.

When a person without notice of any charter-party between the shipowner and the charterer ships goods on board a vessel which is advertised as a general ship by the charterer only, such goods are not subject to a lien which may be reserved by the charter-party to the shipowner in respect of overdue freight; and under such circumstances, an intending shipper is not bound to enquire as to the existence of a charter-party.

Peek v. Larsen (40 Law J. Rep. Chanc. 763; Law Rep. 12 Eq. 378) approved.

This was an action for breach of duty, brought under the Admiralty Court Act, 1861, s. 6, by the plaintiffs, Messrs. Barber & Co., the consignors of thirty-nine casks of linseed oil from Lowestoft to London, on the steamship *Stornoway*. The material facts, which were really undisputed, were that the defendants, Messrs. Methuen & Co., the owners of the *Stornoway*, in October, 1880, chartered her to the firm of Julius Thompson & Co., of London, the owners paying the wages of the master and crew. The charter was to remain in force for three or six months, and so on from time to time, unless the charter-party should be put an end to by the charterers by a ten days' notice of discontinuance. By the charter-party, the owners were to receive the freight monthly, and were to have a lien for it on cargo laden on board.

The Stornoway, Adm.

Messrs. Thompson & Co. employed the *Stornoway* as a general ship, and advertised her as such in the Lowestoft newspapers and by placards (their name only appearing in connection with her), to ply between London and Lowestoft. The plaintiffs made arrangements with the master, when the *Stornoway* first began to run, to carry their goods at the rate of 5s. 6d. per ton. On the 10th of May, 1881, the plaintiffs consigned thirty-nine casks of linseed oil to their agents in London. No bill of lading was signed, but a receipt for the goods was given by Messrs. Thompson's clerk at Lowestoft. The plaintiffs had no notice or knowledge that any charter-party between Thompson & Co. and the defendants was in existence. When the *Stornoway* arrived in London freight was in arrear, and the defendants had become aware that Messrs. Thompson & Co. were in difficulties. The actual amount due for freight from Messrs. Thompson & Co. to Messrs. Methuen & Co. under the charter was 58*l.*, and there were further sums due to the defendants on a general account, making the total sum due from Thompson & Co. to the defendants 86*l.* 15*s.* Upon the arrival of the *Stornoway* the defendants seized the whole of the plaintiffs' goods, to the value of 500*l.*, in the exercise of their lien, and landed them under their possession. The plaintiffs tendered the freight in respect of their goods to Messrs. Thompson & Co., and one of Messrs. Thompson's clerks asked Mr. Methuen, one of the defendants, if he would accept this freight, but he refused to have anything to do with the plaintiffs. An action was then begun by the plaintiffs for a return of their goods, and damages, on the ground of a breach of duty on the part of the owners of the *Stornoway*, and subsequently, by arrangement, the defendants gave up possession of the plaintiffs' goods on their paying the sum of 86*l.* 15*s.* into Court, to abide the result of the trial.

During the progress of the trial the defendants' counsel limited their claim to the amount due for freight under the charter-party.

Myburgh, Q.C., and *R. T. Reid*, for the plaintiffs, argued that the shipowners had no lien on goods put on board a general

ship in respect of a lien in the charter-party existing between the shipowners and charterers which was unknown to the merchant.

The law has never gone to the length contended for by the shipowners; the merchant is only bound by the terms of the charter-party if he has notice of it, and he need not make enquiries whether there is any charter-party if there is nothing to direct his attention to it. They also relied on *Peek v. Larsen* (1).

Macleod, Q.C., and *Manuel Jones*, for the defendants, distinguished *Peek v. Larsen* (1) and relied on *Small v. Moates* (2).

Reid, in reply.

SIR R. J. PHILLIMORE.—The question in dispute in this case was clearly stated by the plaintiffs' counsel at the commencement of his argument. There are in this case three sets of persons involved, but two only are parties to the action. In October, 1880, a charter-party was made between Thompson & Co. and the defendants, Methuen & Co., for three or six months, at charterers' option, they giving ten days' notice of discontinuance, and the defendants having a lien for their freight. Thompson & Co. then advertise the *Stornoway* as a general ship, and in the advertisements they only are put forward in connection with her. The next step is that Barber & Co., the plaintiffs, ship their goods on the *Stornoway*, knowing at the time nothing whatever of Methuen & Co., the shipowners, or of any charter-party having been made between them and Thompson & Co., and subsequently the plaintiffs' goods are seized by the defendants in respect of their lien. Now the simple question arises whether there can be any lien under this charter-party on the plaintiffs' goods under such circumstances as are admitted in the present case. I have been referred, during the argument, to the case of *Peek v. Larsen* (1), and though the facts are not quite the same as in the present case, still it appears to me to be an authority which applies to this case, and I am of opinion that I must follow the judgment of the

(1) 40 Law J. Rep. Chanc. 763; Law Rep. 12 Eq. 378.

(2) 9 Bing. 579.

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Master of the Rolls, as the general principles laid down by him seem to govern the present case. I therefore pronounce for the plaintiffs, with costs.

Solicitors—T. Cooper & Co., for plaintiffs;
Druce Jackson & Atlee, for defendants.

PROBATE. }
1882. }
Feb. 24, 28. } BROWNRIGG v. PIKE.

Will — Probate — Married Woman — Power of Appointment—Exercise by Deed —Conveyance to Separate Use—Personal Estate—Arrears of Rent—Appointment of Executor.

The appointment of an executor is sufficient to entitle a will to probate, even if it disposes only of real estate.

Arrears of rent of separate property, accruing due in the lifetime of a testatrix, as well as such of the apportioned parts of the rents accruing due after her death as are attributable to the time preceding her death, form part of her separate personal estate, and are therefore capable of being disposed of by her.

Real property was devised to trustees upon trust for such intents and purposes and in such manner and form as A by any deed or deeds duly executed, or by her last will and testament should appoint, whether covert or sole. A, being then a married woman, by a deed in execution of the power of appointment, conveyed the same property to trustees upon trust for herself, her heirs and assigns, for her sole and separate use, and directed that the property should not be sold, but should remain and be dealt with and descend as real estate. A afterwards executed a will, by which she gave and devised all her real estate which she had power to dispose of to her husband for life, and after his death she devised portions of the estate to several persons, and the residue to B, upon trust to pay certain legacies. She empowered her executor to lay out a sum

not exceeding 200l. upon a memorial window, and gave the residue in trust to be divided equally between B and C; and after revoking all other wills, appointed B as her executor. A was at the time of her death entitled to arrears of rent of real estate then due, and to apportioned parts of rent then accruing; but she was not possessed of or entitled to any other personal estate:—

Held, that A's will was entitled to probate.

This case was argued upon a demurrer to a statement of claim, the material portions of which are set forth in the judgment.

The plaintiff propounded, as sole executor, the will of Elizabeth Pike, the wife of the defendant Thomas Henson Pike, of Newport Pagnell, Buckinghamshire. The will bore date the 28th of January, 1881, and the testatrix died on the same day.

The defendant demurred to the statement of claim, on the ground that the will dealt only with real estate, and cast upon the executor no duty apart from such real estate, and was therefore not entitled to probate.

Patchett, Q.C. (Anderson and Whitworth with him), for the plaintiff.

Inderwick, Q.C., and Bayford, for the defendant.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on Feb. 28).—This was a demurrer to a statement of claim by the executor of the will of Elizabeth Pike, a married woman. The statement of claim sets out the circumstances under which the will was made. It appears that real property was devised by William Pike to trustees upon trust for such intents and purposes and in such manner and form as the deceased Elizabeth Pike, by any deed or deeds by her duly executed, or by her last will and testament, should appoint, whether covert or sole. The testatrix executed the power so conferred upon her by a deed of the 18th of April, 1878, and conveyed this property to trustees upon trust for herself, her heirs and assigns, for her sole and

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separate use. Then follow some words which do not appear to me to affect her powers of disposition in any way (though their exact meaning is not very clear), to the intent that the said real estate might not be sold, but should remain and be dealt with and descend as real estate. After having executed that deed, she made her will, which is the subject of this litigation, and by which she gave and devised all her real estate which she had power to dispose of to her husband for the term of his natural life; and after his death she devised portions of the estate to different persons; and as to the residue of her real estate, she gave and devised it to John Studholme Brownrigg, "upon trust to pay the following legacies"; after mentioning which legacies she proceeds: "I empower my executor to lay out a sum, not exceeding 200*l.*, as he may deem expedient, in placing a memorial window in Moulsoe Church; as to the residue, in trust to divide the same equally between the said Catherine Laura Studholme Brownrigg and the said John Studholme Brownrigg." Then, revoking all other wills, she appoints John Studholme Brownrigg executor. The statement of claim further alleges that the said Elizabeth Pike was at the time of her death possessed or entitled of or to personal property belonging to her and for her separate use, to wit, arrears of rent due from the tenant or tenants of the residuary real estate of William Pike, and to apportioned parts of accruing rent become due since her death; but she was not possessed of or entitled to any other personal estate.

It is to be observed that the will is not made in execution of the power. By the deed which was executed under the power the property became settled to the separate use of the wife, with precisely the same effect as if it had been so settled by a third person. The nature of the wife's interest was thus changed, and from power it became property, with all its incidents, among which incidents is the right to dispose of it by will; and in the Ecclesiastical Courts, as well as in the Courts of equity, a wife has always been regarded, with respect to her separate property, as being in the same position as a *feme sole*. If the

deceased had been a *feme sole*, and had executed this will, would it have been entitled to probate? In the first place it is said that it deals only with realty, and is therefore not entitled to probate. It is not, however, the fact that the will is limited to the disposition of real estate. In the first place there is an executor appointed by it, and this has been held to entitle a will to be admitted to probate, although it disposes only of real property—see *Williams on Executors* (6th ed.), 374; *O'Dwyer v. Geare* (1). It is, however, further admitted on the pleadings that this lady died possessed of personalty. This would be sufficient for the purposes of argument on the demurrer; but it may be as well to add that the arrears of rent which accrued due in her lifetime were part of her personal estate, and also that upon her death the rents became apportionable, and that the portion to be attributed to the time preceding her death was part of her personal estate—*Capron v. Capron* (2). It follows from the fact that this personal estate proceeded from her separate property, that it was also for separate use, and capable of being disposed of by her. Thus it appears that the deceased died possessed of personal property which she was entitled to dispose of by will, and that she has appointed an executor.

It was not disputed that, if she had been a *feme sole*, her will would have been entitled to probate. The authorities are clear upon that point. "To appoint an executor," says Swinburne (part 4, s. 2, par. 2) "is to place one in the stead of the testator, who may enter into the testator's goods and chattels, and who hath action against the testator's debtors, and who may dispose of the same goods and chattels towards the payment of the testator's debts, and the performance of the will." Mr. Justice Williams also says—*Williams on Executors* (6th ed.), p. 218—"The bare nomination of an executor, without giving any legacy, or appointing anything to be done by him, is sufficient to make it a will, and as a will it is to be proved." In

(1) 1 Sw. & Tr. 465; 29 Law J. Rep. P., M. & A. 47.

(2) 43 Law J. Rep. Chanc. 677; Law Rep. 17 Eq. 288.

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the present case, however, there is something more to be done by the executor. The will directs that a memorial window shall be erected. This duty is to be performed by the executor, and if the proceeds of the real estate had not been sufficient to do more than pay the legacies, the executor would have been bound to apply the personalty to this purpose. It was contended that the will does not in fact dispose of the personalty, and therefore that the executor does not take *jure representationis*. For this the case of *Ingram v. Hopkins* (3) was cited; but it will be found that Lord Chief Justice Tindal expressly rests his judgment upon the fact that the will before the Court was made under a power; for he observes, "But then it is said that, although these accumulations were not disposed of by the will, yet, executors having been appointed, the law vested the money in them; but the authority of these executors is only co-extensive with the power given by the will, for the executors here do not take *jure representationis*, but under the power which the wife was authorised to exercise by making a will as to this particular property (4)." I have already pointed out that the will in this case was not made under the power, but by virtue of the right which a married woman has to make a will in respect of her separate property. By appointing an executor her separate estate vests in him, to be got in by him, and to be applied either according to the provisions of the will, or as the law directs.

For these reasons I hold that this will is entitled to be admitted to probate, and I overrule the demurrer, and direct the trial of the issues of fact to be proceeded with.

Solicitors—Pattison & Wigg, agents for Powell, Newman & Co., Newport Pagnell, for plaintiffs; G. P. Rogers, agent for W. B. & W. R. Bull, Newport Pagnell, for defendant.

DIVORCE. }
1882. } SMITH v. SMITH, MAJOR, CHILD
March 28. } AND RABETT.
April 25. }

Practice—Costs—Guilty Wife—Time for Application—20 & 21 Vict. c. 85. s. 51—Divorce Rules, rule 159.

In a husband's suit for dissolution of marriage the petitioner was ordered by the Registrar to pay into Court, or give security for, a certain sum for the respondent's costs. No appeal was brought by the respondent on the ground of the insufficiency of the sum named, for which security was afterwards given. At the trial a decree nisi was granted, and the three co-respondents were condemned in costs. The Court made the usual order as to the wife's costs; no application for the allowance of additional costs being made on her behalf. After the decree had been made absolute the Court refused to order payment by the petitioner of the respondent's taxed costs beyond the amount secured.

Observations upon the judgment of the Court of Appeal in Robertson v. Robertson (Ante, p. 5; Law Rep. 6 P. D. 119).

This was an application for the allowance of additional costs to the respondent in a husband's suit for a dissolution of marriage.

The case had been twice tried. At the first trial the jury were unable to agree upon a verdict, and were discharged; and an order was afterwards made by the Registrar that the petitioner should pay into Court, or give security for, a sum of money to meet the respondent's costs of the second trial.

No appeal was brought against the Registrar's order on the ground of the insufficiency of the sum named therein. At the second trial the jury found that the respondent had been guilty of adultery, and the Court pronounced a decree nisi with costs against the three co-respondents. The Court at the same time made the usual order as to the wife's costs.

The decree nisi was made absolute on the 17th of January, 1882, and the respondent's costs were afterwards taxed, but the Registrar refused to allow her any

(3) 4 Man. & G. 389.

(4) Ibid. 400.

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further costs beyond the amount ordered to be secured.

Dr. Swabey, for the respondent.—In *Robertson v. Robertson* (1) the Court of Appeal laid down an entirely new principle, and according to that case the wife's costs ought to be allowed without reference to the amount already secured or paid into Court, except, perhaps, in the case of misconduct on the part of her solicitor.

Searle, for the petitioner.—The application is too late. In *Flower v. Flower* (2) it was held that an application to allow additional costs to the wife could not be made after the decree absolute, and that case is not overruled by *Robertson v. Robertson* (1), which, moreover, was decided after the date of the decree *nisi* in the present case. If the petitioner is now ordered to pay additional costs, he will be unable to recover the amount from the co-respondents.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on April 25th).—This is the first occasion since the case of *Robertson v. Robertson* (1) was decided in the Court of Appeal on which I have been called upon to consider the effect of that judgment upon the practice of this division. The question involved is one of considerable importance, as affecting the exercise of my discretion in a very large number of matrimonial causes which are tried before me.

In *Robertson v. Robertson* (1) I refused to allow the wife, who was guilty of adultery and failed to prove any charge against her husband, more than 370*l.* for her costs, security having been given for that amount. The Court of Appeal held that I ought to have allowed her her full costs, whatever they might on taxation have proved to be. My power as to costs is conferred by the 20 & 21 Vict. c. 85. s. 51, which enacts that "the Court may make such order as to costs as to such Court may seem just." I am of course aware that this discretion must be exercised not arbitrarily or capriciously, but judi-

cially. If the Court of Appeal had felt itself in a position to overrule the exercise of my discretion in the particular case I should have accepted its correction without observation; but the Master of the Rolls says, "The learned Judge did not exercise any discretion at all; he simply made the usual order as to costs, an order which has become usual in the way I have mentioned. Therefore it is not a case where the appeal is as to an exercise of discretion, but a case where the Judge, conceiving himself bound by a rule of practice which we think erroneous, simply followed that rule." I assume from these observations that the learned Judge was not in possession of the facts of the case. I certainly did not conceive myself to be fettered by the practice in the exercise of my discretion, and I was under the impression that I had exercised it. If I had thought it just that the wife should have more than 370*l.* for her costs, there was nothing in the practice to prevent my giving her more. The facts appearing on the minutes of the Court are these:—Security was originally given by the husband for 150*l.* Ten days before the trial application was made by the wife to increase this sum on account of the expense of bringing witnesses from Italy, and the amount was accordingly increased to 370*l.* The trial occupied portions of three days. On the first day a summons was taken out to further increase the amount, and was heard in open Court. I find on reference to the shorthand-writer's notes that I said "I must have some further explanation. We are now in the middle of the case. It was always known that the adultery was charged to have been committed in Italy. It was always known that Favagrossa was charged as co-respondent. It must therefore have been taken into account when the costs were estimated." I accordingly reserved the question till after the hearing, and subsequently heard the summons in chambers, and refused the application on special grounds affecting the solicitor as well as the respondent. I do not now enter into my reasons, as they would be irrelevant on this occasion, and my object is not to justify the exercise of my discretion, but to shew that I did exercise it in

(1) *Ante*, p. 5; Law Rep. 6 P.D. 119.

(2) 42 Law J. Rep. Prob. & M. 45; Law Rep. 2 P. & D. 228.

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the fullest way in which that duty can be discharged by a Judge.

I now proceed to trace the origin and growth of the practice of the Divorce Court as to the wife's costs. I do not think it necessary to say much as to what the Master of the Rolls terms "the nobler view," which prevailed in the practice of the House of Lords on bills for divorce. It is matter of legal history that the expenses of proceedings before that tribunal were so large that they amounted to a denial of justice to all but the very wealthy, and it was to remedy this evil that the Divorce Court was established. In the Ecclesiastical Courts the wife was entitled to have her costs taxed *de die in diem*, so as to enable her to defend herself, but if her proctor neglected to take this course it was the invariable practice not to make any order for costs in favour of a wife who had brought her cause to a hearing and had failed. This question was in 1858 brought to the consideration of the Full Court of Divorce (the then Court of Appeal), consisting of Lord Chelmsford, Sir Cresswell Cresswell and Mr. Justice Wightman—*Keats v. Keats and Montezuma* (3). On an application for a wife's costs the Court said, "You are too late for that now. Your application should have been made before the cause was heard. The foundation of the rule of the Ecclesiastical Courts was that the wife should be enabled to bring her case to a hearing and defend herself; and so up to any time previous to the hearing the husband was generally liable to have the wife's costs taxed against him, and the Court has so far followed the rule, as in *Evans v. Evans and Robinson* (4); but if the wife has brought her case to a hearing, and fails, the husband has never then been made liable for her costs."

Sir Cresswell Cresswell had, in the case referred to, established the practice of directing security to be given for the wife's costs, out of which her solicitor was entitled, if the Court so ordered, to have his costs, and this was the practice while he presided over this Court. The Master of

the Rolls says, "I must say, in fairness to Sir James Hannen, that this practice did not begin with him, and that he merely followed the practice of his immediate predecessor, who followed the practice of Sir Cresswell Cresswell." It has been seen that the practice of the Ecclesiastical Courts, as adapted by Sir Cresswell Cresswell to the Divorce Court, has been followed by the Full Court, but Lord Penzance did not merely adopt his predecessor's practice, but he modified and embodied it in a Rule of Court made under the authority of the Act of Parliament. Rule 159 is as follows:—"When on the hearing or trial of a cause the decision of the Judge Ordinary or the verdict of the jury is against the wife, no costs of the wife of and incidental to such hearing or trial shall be allowed as against the husband, except such as may be applied for and ordered to be allowed by the Judge Ordinary at the time of such hearing or trial." I had power, if I thought fit, to alter this rule, but, so far from my experience of its working leading me to think it objectionable, I (so to speak) re-enacted it by the Amended Rules of the 14th of July, 1875.

Before examining the interpretation put by the Court of Appeal upon this rule, I wish to state what its operation has been. In a vast majority of divorce cases the parties are poor. It is of course essential to justice that the wife should be provided with the means of having the charge against her fully investigated, whether she be guilty or not; but it is of scarcely less importance that the husband should not be called upon to pay or secure more costs than are really necessary for this purpose. It frequently happens that the proceedings are stayed because the husband cannot pay or secure the required amount, and by this and other means the proceedings are delayed as much as possible, with the result, if not with the object, that the husband has to pay alimony to the wife for as long a period as possible. When at length he is able to bring the case to trial it is a common occurrence for the counsel representing the wife to say candidly that, as he is not in a position to call his client to deny the charge, he will not take up time by contesting the case. It is obvious

(3) 1 Sw. & Tr. 33; 28 Law J. Rep. Prob. & M. 57.

(4) 1 Sw. & Tr. 328; 28 Law J. Rep. Prob. & M. 57.

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that in such cases the respondent has known from the beginning that she has no defence, and yet she has put her husband to great and unjustifiable cost and expenses. That she has had sufficient means to bring her case to that stage is plain; *res ipsa loquitur*. Is it unreasonable to say that she shall have no more unless she satisfies the Judge at the trial that more was necessary? I am aware that the question is not solely one between husband and wife, but involves also the interests of her solicitor; and I expressed in *Flower v. Flower* (2) as strongly as I could my opinion of the necessity of making sufficient provision for his remuneration. It would be impossible to ascertain in what cases and at what stage of the proceedings he has become aware that his client is guilty; and I do not think that a solicitor is bound to abandon his client on discovering that she cannot deny the charge of adultery, for by doing so he might cause her to seek the assistance of some less scrupulous adviser. There is an honourable way of defending the worst of cases; but all inducement to economy in the conduct of the wife's defence will be removed if her costs are to be allowed in the same manner in every case, whether she be guilty or not, without any limitation for the protection of the husband beyond ordinary taxation. The limitation afforded by Rule 159 and the practice as to giving security is intended to strike a fair balance between the interests of the husband and those of the wife's solicitor, and it operates in this manner: The solicitor gets actual payment of all costs until directions as to the mode of trial are given. He then states to the Registrar what witnesses he proposes to summon and all the circumstances which may enable the Registrar to fix the amount required for the hearing; and if he is dissatisfied with the Registrar's order he may appeal to the Judge. If the circumstances of the case make it reasonable, I frequently allow the case to proceed, reserving to the wife's solicitor the right to have his costs taxed and to apply for an order for their allowance at or after the trial, as though security had been given. If unexpected incidents are alleged to have arisen, application may be made to increase the amount to be secured, as was done in *Robertson v. Robertson* (1), and at

the trial the solicitor has an opportunity, under Rule 159, of shewing cause why costs beyond the sum secured should be allowed. The safeguards in favour of the solicitor do not end here, for in *Somerville v. Somerville and Webb* (5), Lord Penzance held that, even after the trial, an application on special grounds as to the wife's costs may be entertained. Can it be said that the protection of the solicitor is not amply provided for? He is in fact the most favoured of practitioners, for he can, whatever the merits of the case may be, stay his adversary's proceedings until all the costs which he may shew can be reasonably anticipated have been paid or secured. If he does not take the necessary steps to obtain sufficient security or an order of the Court for costs it is his own fault. Numerous instances where costs are lost if not asked for at the proper time may be cited in the practice of all Courts. On the other hand, if a general order for all the wife's costs is to be made in every case, the costs may be allowed of witnesses who were not mentioned when the security was fixed, and who were not called at the trial. It may be impossible for the Registrar to say that their evidence was not relevant, and it would not be expedient or possible to make the costs of witnesses depend upon the question whether they or the respondent were put into the witness-box. Such a course would tend to discourage that honourable candour of counsel to which I have referred, and would supply a motive for perjury and the prolongation of hopeless defences; and it is impossible for the Registrar who did not hear the case to know to what extent unnecessary costs have been incurred. It is only the Judge, who has heard the witnesses and seen the course the trial has taken, who can form an opinion on this subject; and Rule 159 only aims at this, that the wife's solicitor shall at the trial, while the circumstances are fresh in the recollection of the Judge, state the facts which he alleges to have justified him in exceeding the costs already provided for.

I assume that when the learned Judges of the Court of Appeal said that they have power to overrule the practice of the

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Divorce Court they meant that they have power to abrogate, not a rule made under the authority of an Act of Parliament, but only a particular interpretation of it; and I therefore proceed to consider what interpretation they have put upon Rule 159. The Master of the Rolls says, "The 159th rule is plain. No costs shall be allowed except such as shall be applied for and ordered by the Judge at the time of the hearing. That of course means, ordered to be allowed in the exercise of a judicial discretion; and it appears to me that, there not being a suggestion that the solicitor for the respondent has conducted himself otherwise than properly, or that he had not fair grounds for believing that the wife had a defence against the charge of adultery, he ought to be allowed the usual costs." It is to be observed that the Master of the Rolls did not apply this principle to the costs of the appeal in *Robertson v. Robertson* (1) or in *McAlpin v. McAlpin* (6). In each of those cases the wife's appeal was partially successful. It cannot, therefore, be said that the solicitors in those cases acted otherwise than properly, or that they had not fair grounds for bringing the appeal; yet in each case the wife's costs of appeal were refused. Lord Justice Brett says, "If the solicitor who appears for the wife either knowingly promotes a case which it must be clear to anybody has no foundation at all, so that he is countenancing improper litigation, or if he takes steps which are merely oppressive or obviously unnecessary, or if he crowds a case with absurd evidence; all these are reasons why, if he so misconducts himself, the costs of the wife should be disallowed, either in whole or in part." Lord Justice Cotton says that Rule 159 "gives a discretion to the Judge in this way, that where there are certain steps taken improperly by those who are acting for the wife—witnesses who ought not to have been called, and so on—those are costs which in his discretion he may disallow." The result of these passages seems to be that the Court thought that, upon the true construction of Rule 159, the wife is not bound at the trial to shew why she should be allowed more than the sum which upon

her statement of facts the Registrar deems sufficient, but the husband is to shew cause why she should not be allowed all that she may claim. This cannot be done at the trial, for the husband does not then know what the wife's claim will be, nor can it be effectually done before the Registrar, for he would not know the Judge's view as to the necessity for the additional costs claimed. The Judge himself must therefore, if called upon to do so, consider the propriety of the wife's costs when brought in. This is the course which I have proposed to take in every case since the decision of the Court of Appeal in *Robertson v. Robertson* (1).

Thus the consideration of the justice of the wife's claim to increased costs is unavoidably postponed from the trial till some time afterwards; and it must be left for future experience to determine whether this will necessitate a change in the rules. In the present case, however, I do not see how the respondent can invoke the aid of the decision of the Court of Appeal in *Robertson v. Robertson* (1). That case had not been decided when I made the order now complained of. I was not asked at the hearing for an order for any costs beyond the amount for which security had been given. There had been no appeal from the Registrar's order, and no application to increase the amount to be secured. Had I been asked at the trial to give a larger amount, I should have considered the application, having regard to all the circumstances of the case. Even after the hearing, I should, in conformity with the decision of Lord Penzance in *Somerville v. Somerville and Webb* (5), have entertained any application on special grounds for an order to increase the wife's costs; but eight months were allowed to pass, and in the meantime the decree has been made absolute. I consider that I have no more power to alter my order in this case than to do so in each of the numerous cases in which I have made similar orders during the last ten years. In *re St. Nazaire Company* (7) decides that the Court has not authority after a case is concluded to recall an order, however erroneous, which correctly ex-

(6) Not reported.

(7) Law Rep. 12 Ch. D. 88.

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pressed the Judge's opinion at the time. I must therefore refuse this application.

I was not asked in *Robertson v. Robertson* (1) or in *McAlpin v. McAlpin* (6) (another case in which, for special reasons, I refused an application after the trial to allow the wife's costs beyond the amount secured), and so far as this is a question of costs, I doubt whether I have the power to give leave to appeal; but as I have no wish to throw any obstacle in the way of an appeal, I will say, if it be necessary and if I have power to do so, that I grant leave to appeal.

Solicitors—T. E. Watkin, for petitioner; C. O. Humphreys & Sons, for respondent; B. Davis & Child & Son, for other parties.

[IN THE COURT OF APPEAL.]

PROBATE.

JESSEL, M.R.

BRETT, L.J.

HOLKER, L.J.

1882.

Feb. 13, 14.

BLAKE v. BLAKE.

Acknowledgment of Will — Testator's Signature not seen by Attesting Witnesses — Probate—Wills Act, 1837 (1 Vict. c. 26), s. 9.

In order to constitute a due acknowledgment of the signature of a will under section 9 of the Wills Act, 1837, it is necessary that the attesting witnesses should actually see the signature of the testator at the time of the acknowledgment.

And semble that though the testator should say "This is my will," or even "My signature is under there," and the witnesses do not actually see the signature, there would be no sufficient acknowledgment.

Hudson v. Parker (3 Robert. 25) approved. *Gwillim v. Gwillim* (3 Sw. & Tr. 200) and *Beckett v. Howe* (39 Law J. Rep. Prob. & M. 1; Law Rep. 2 P. & D. 1) dissented from.

In this case the will of Mrs. Mary Gunston, who died on the 14th of March, 1881, was propounded by the plaintiff, a

brother of the testatrix, who under the will was the sole executor and residuary legatee, and its due execution was contested by the defendants, who were some of the next-of-kin.

The will was dated the 12th of August, 1880, and was executed and attested in the following manner:—

"Signed by me in the presence of the undersigned, who in my presence, and in presence of each other all present at same time, signed their names as witnesses,

"Mary Gunston,

"Holderness House, Brixton Road;

"Ann Harradine,

"Holderness House, Brixton Road;

"Susan Harradine,

"Arrington, Cambridgeshire."

Except for some erasures in the will probate would have passed in the usual manner. But upon the attesting witnesses being called upon to make an affidavit as to due execution to satisfy the authorities at the Probate Office, it appeared that they were unable to say that they had seen the testatrix sign. This action was then brought asking for probate in solemn form.

Evidence was given by a Mr. Chillingworth, who had formerly been a clerk in the Probate Office, and who was a friend of the testatrix, that he had at her request given her accurate instructions in writing as to how a will ought to be validly executed.

Of the attesting witnesses, Ann Harradine was the testatrix's servant, and Susan Harradine was an aunt of Ann Harradine, and was staying in the house upon a visit at the time the will was made. Their evidence was, that when they were called in by the testatrix to sign their names, a piece of blotting-paper lay over the place where the testatrix's signature now appeared. They did not see the testatrix write her name; nor did they during the time they were writing their own names see the signature. They had no reason to suppose that what they signed was a will. According to Susan, Mrs. Gunston said, "We have all our little wishes, and this is one of mine." According to Ann, Mrs. Gunston said, "This is a little whim of mine." They were both sure that whatever the word used was, it was not "will."

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Sir James Hannen decided that there was no proof that the will was duly executed. The plaintiff's benefit under the will was about equal to the share to which he would be entitled as one of the next-of-kin. Some of the other legatees, who had intervened, now appealed.

Deane, Q.C., and *H. F. Dickens*, for the appellants.—The evidence will not support the contention that the will was signed in the presence of the witnesses, and so we do not propose to argue that; but it is sufficient if the will is acknowledged in the presence of the witnesses—Wills Act, s. 9.

[*JESSEL, M.R.*—The attestation clause here only attests that the will was signed in the presence of the witnesses: it does not purport to attest any acknowledgment. Is it wise, then, to abandon the contention that it was signed in the presence of the witnesses?]

It is sufficient if there was a practical acknowledgment, though there are no words of acknowledgment in the attestation clause. We submit that upon the evidence the will was sufficiently acknowledged—*Gwillim v. Gwillim* (1), *Beckett v. Howe* (2) and *Cooper v. Bockett* (3).

Indervick, Q.C., and *Middleton*, for the respondents, relied on *Hudson v. Parker* (4).

Deane, Q.C., replied.

Plott v. Genge (5) and *Smith v. Smith* (6) were also cited.

JESSEL, M.R.—I regret to say that I am unable to come to the conclusion that the testatrix's will in this case was duly executed. It is the merest accident that what we all know to be without doubt her last wishes cannot be carried into execution. It does not appear that the testatrix signed her name in the presence of the witnesses. I invited counsel to argue that the will was so executed, but now that I have heard the evidence I agree

that Dr. Deane knew more about it than I did, and that he was exercising a wise discretion in not urging that point; for it is plain upon the evidence that the will was not signed in the presence of either witness, but before they came in. Then we have to consider the question of acknowledgment. Now the question, What is a sufficient acknowledgment? is a question of law. My view is that the law is accurately stated in *Jarman on Wills*, vol. i. p. 108, 4th ed., thus:—"There is no sufficient acknowledgment unless the witnesses either saw or might have seen the signature, not even though the testator should expressly declare that the paper to be attested by them is his will." And I may add that in my opinion it would not be sufficient if the testator said "My signature is inside there," unless the attesting witnesses actually saw it. There are no doubt many cases upon the subject, but I will only refer to three. First, there is *Hudson v. Parker* (4), in which the subject is elaborately discussed by Dr. Lushington. At p. 25 of the report (3 Robert.), he is reported as saying, "How is it possible that the witnesses should swear that any signature was acknowledged unless they saw it? They might swear that the testator said he acknowledged a signature, but they could not depose to the fact that there was an existing signature to be acknowledged. It is quite true that acknowledgment may be expressed in any words which will adequately convey that idea if the signature be proved to have been then existent—it would be quite sufficient to say 'That is my will,' the signature being there and seen at the time, for such words do import an owning thereof."

That is quite clear. Now I have to consider *Beckett v. Howe* (2), where a different rule was laid down by Lord Penzance. At p. 5 (7) he says, "The doctrine in *Gwillim v. Gwillim* (1) is this, that if the testator produces a paper, and gives the witnesses to understand it is his will, and gets them to sign their names, that amounts to an acknowledgment of his signature if the Court is satisfied that the signature of the testator was on the will at the time. Whether that decision was

(7) 39 Law J. Rep. Prob. & M. 3; Law Rep. 2 P. & D. 5.

(1) 3 Sw. & Tr. 200.

(2) 39 Law J. Rep. Prob. & M. 1; Law Rep. 2 P. & D. 1.

(3) 4 Moore P.C. 419.

(4) 3 Robert. 25.

(5) 3 Curt. 160.

(6) 35 Law J. Rep. Prob. & M. 65; Law Rep. 1 P. & D. 143.

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right or wrong I have not to determine. It was founded on other cases. Provided the testator acknowledges the paper to be his will, and his signature is there at the time, it is sufficient." I dissent from that proposition. The argument is founded on the notion that a statement made by a testator, "This is my will," implies that his signature is affixed to it. But that is not so, for until it is attested it is only what is intended to be his will, and there is no necessary implication that it already bears the testator's signature. He might intend to sign it afterwards. But I go further, and say that it would not do although it was signed, if the witnesses did not see the signature. But I do not find that in *Gwillim v. Gwillim* (1) Sir Cresswell Cresswell laid down any such doctrine as Lord Penzance says he did. Sir Cresswell Cresswell did not decide anything of the kind. In *Gwillim v. Gwillim* (1) the testator's signature was immediately above the signatures of the attesting witnesses; and therefore, if nothing was put over the signature, it was impossible that the witnesses should not have seen it if it was there. Therefore the argument turned upon the question whether the signature was there or not. The material part of Sir Cresswell Cresswell's judgment is at p. 205 (8), where he says, "I am, therefore, at liberty to judge from the circumstances of this case whether the name of the testator was on the will at the time of the attestation or not. . . . I cannot therefore but think that the name of the testator was written at that time, and that by asking those old ladies to witness his will he did acknowledge his signature." That is the doctrine of *Hudson v. Parker* (4); because the witnesses must have seen the signature. And there is really nothing to shew what the learned Judge's decision would have been if the witnesses had not seen the signature. That being so, it seems that the doctrine upon which the appellants rely rests entirely, not upon any decision, but merely upon a statement of Lord Penzance as to *Gwillim v. Gwillim* (1).

The only point then is—Did the at-

testing witnesses in this case see the signature? I am of opinion that they did not. The evidence of one of the witnesses was that at the time when she was called in a piece of blotting-paper was over it, and the present appearance of the document entirely corroborates that. I have examined the signature very carefully, and its appearance is dull and blurred as if blotted with blotting-paper. The other witness said the same thing at first, and then doubted. I can only come to the conclusion that the witnesses did not see the signature, and, therefore, that there was not sufficient acknowledgment. It is not necessary to consider whether the testatrix said that the document was her will.

BRETT, L.J.—In this case we have in form a will, by which the testatrix intended to deal with her property; she signed it, and it is clear that she thought that she was complying with the statute. As it is undoubtedly the lady's last will no one can be astonished if the Court has made every endeavour to uphold it. One cannot help being distressed to think that her last disposition is to depend upon the accident whether she put a piece of blotting-paper a quarter of an inch higher or lower upon the paper. But the question depends upon a statutory enactment about which there is no elasticity. Our only duty is to say whether the statute has been complied with. We must say, No.

First, What are we now in the Court of Appeal to assume were the real facts of the case? If the President of the Probate Division had come to the conclusion on the evidence, that in fact the testatrix did sign in the presence of the witnesses, I should certainly not propose to interfere; or if he had found that the signature was visible, I would not for a moment venture to disagree. But the learned Judge came to the conclusion that the blotting-paper was so placed that the witnesses could not see the signature, and we must take it that that was so. Although they did not see the signature, did the testatrix say to them, "This is my will"? The witness does not know whether she said, "This is my will," or "This is my whim." But

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I will assume that she used the word "will." Then is that a sufficient acknowledgment, if the witnesses did not see the signature? It is a point of law, and must be decided upon the proper interpretation of the 9th section of the Wills Act. If there were twenty cases deciding that that would do, and we were of opinion that it did not satisfy the statute, we should have to overrule all the cases, however we might dread the idea of overruling a course of decisions. However, there is no long line of decisions here; but, on the contrary, there are conflicting decisions. Therefore we have to examine the question almost independently.

In *Hudson v. Parker* (4) Dr. Lushington dealt with the very point exhaustively; and came to the conclusion that, under the new statute, where the will is not signed in the presence of the witnesses—where it is necessary, that is, to rely upon an acknowledgment, no matter what the testator says, it is not a good acknowledgment if the witnesses cannot see the signature. To make it an acknowledgment it is absolutely necessary that the witnesses should see the signature. I entirely agree with Dr. Lushington's reasoning. Where the signature is made in the presence of the witnesses, they must see the testator sign. Is it to be the same when they are witnesses only of his acknowledgment? From the statute it can only be inferred that it is to be the same. What the witnesses are to attest is the will. Therefore it all turns upon what is meant by "acknowledge." When the signature is to be acknowledged, the witnesses must see that there is a signature, and in their presence the testator must acknowledge it. Therefore if they don't see it, although the testator says, "This is my will," or even "My signature is under there," it will not do. That is the meaning of *Hudson v. Parker* (4) and of the statute. It is said that *Gwillim v. Gwillim* (1) and *Beckett v. Howe* (2) are contrary to this. *Beckett v. Howe* (2) certainly is contrary; but it is said that Lord Penzance merely decided that case upon the authority of *Gwillim v. Gwillim* (1), and that *Gwillim v. Gwillim* (1) decides nothing of the sort. Now Sir Cresswell

Cresswell was, of all Judges, perhaps the greatest master of lucid exposition in our time; and when I find him saying, "I am, therefore, at liberty to judge from the circumstances of this case whether the name of the testator was on this will at the time of the attestation or not," I cannot bring my mind to think that he said what he did not mean. Moreover, if there is a Judge who is less likely to make a mistake as to what another had said it is Lord Penzance. Therefore we have to differ both from Sir Cresswell Cresswell and from Lord Penzance. But was the point raised in *Gwillim v. Gwillim* (1)? It certainly was not argued, and *Hudson v. Parker* (4) was not even cited. Still I do think Sir Cresswell Cresswell did intend to lay down the proposition he did lay down.

Then ought we to differ from two such eminent Judges? Yes, if we think that that is the true construction of the statute, we must do so. Therefore, I think we are bound to come to the conclusion as a matter of law that where the witnesses do not see the signature, it does not matter what the testator says, there cannot be an acknowledgment; but if they have an opportunity of seeing the signature it is sufficient if the testator says, "This is my will," although he does not say, "This is my signature."

HOLKER, L.J.—I quite concur in the regret that has been expressed that the testatrix's will cannot be established; but it is the duty of the Court to be relentless. The appeal is put upon two grounds. First, that the will was signed in the presence of the witnesses, though that was not put forward by the counsel voluntarily. The will is, upon the face of it, in due form. The testatrix received proper instructions in the matter from a friend of experience; and it is said that the Court ought to assume that everything was properly done. If the witnesses had been in doubt as to whether they had seen her sign or not, we might have assumed that everything was rightly done. But if the witnesses say, or one of them says that they did not see her sign, there is no proof of due execution. Here I understand the witnesses to say

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that they did not see the testatrix sign, and therefore the appeal cannot be sustained upon that ground. The other question is, Was there a sufficient acknowledgment? The statute says the signature is to be acknowledged. The object is that the witnesses may be enabled to testify to the signature. Good sense requires that the acknowledgment which is to be attested should be an acknowledgment of a signature which was actually shewn to them. Lord Justice Brett says that they are to attest the will. When it is properly signed it is a will, and when the witnesses have seen the signature and heard the testator acknowledge it, to bear testimony to the will is the same thing as to bear testimony to the signature. *Hudson v. Parker* (4) is an express authority that the witnesses must see the signature. But there can be no such acknowledgment here, for the signature was carefully concealed. The evidence does not even establish that the testatrix said the document was her will. She might not desire to tell servants that she was making her will, so that there appears to me that there would be nothing extraordinary in her saying that the thing was a whim. It comes to this, she did not say it was her will, or that her signature was under the blotting-paper, or was there at all; and even if *Hudson v. Parker* (4) were out of the way it would be an enormous straining of the statute to say that the will was properly acknowledged.

Appeal dismissed. Costs of all parties allowed out of the estate.

Solicitors—W. H. Orchard, for appellants; Bell, Brodrick & Gray, agents for G. J. Kenmin, Gateshead, for respondents.

PROBATE. }
1882.
March 8. }

*In the goods of FRANK
LAYLAND WHITE.*

*Will—Construction—Residuary Gift—
“Residue of Money.”*

The testator directed that, after payment of his debts, the “residue of money” should be handed to his sister, “except such things as the undermentioned,” which articles he gave to other persons:—Held, that there was a gift of the residue to the testator’s sister.

Frank Layland White died at Liverpool on the 15th of September, 1881, having, on the 11th of September, 1881, duly executed the following will:—“There is a statement of accounts owing by me to different tradespeople and friends. After these are paid, the whole residue of money to be handed to my sister, Anne Harnett White, excepting such things as the undermentioned specified to certain individuals—black portmanteau, all clothes to James Blythe Page, ‘Brigand and Apothecary’ to Hannah Monck, unframed picture of horse to Jane Page.” No executor was appointed, but a statement of accounts owing by the testator was appended to the will.

Anne Harnett White was a minor.

Pritchard moved for a grant of letters of administration, with the will annexed, to the guardian of Anne Harnett White, as the residuary legatee. He referred to Wiggins v. Wiggins (1), Leighton v. Baillie (2), In the goods of Bloomfield (3) and In the goods of Cadge (4).

THE PRESIDENT (SIR JAMES HANNEN).—I think the word “money,” taken with the context, is used in a general sense, and is sufficient to pass the residue; I will therefore make the grant to the guardian of the testator’s sister.

Solicitors—Pritchard & Marshall, agents for G. R. Rogerson & Co., Liverpool, for applicant.

- (1) 2 Sim. N.S. 229.
- (2) 3 Myl. & K. 267.
- (3) 31 Law J. Rep. Prob. & M. 119.
- (4) 37 Law J. Rep. Prob. & M. 15; Law Rep. 1 P. & D. 543.

[IN THE COURT OF APPEAL.]

JESSEL, M.R.

COTTON, L.J.

LINDLEY, L.J.

1882.

April 18.

GANDY v. GANDY.

Separation Deed—Covenant not to Sue for increased Alimony—Subsequent Adultery of Husband—Suit for Judicial Separation—Petition for Permanent Alimony—20 & 21 Vict. c. 85. ss. 7 and 17.

By a deed of separation, executed in consequence of the adultery of the husband, of which the wife was cognisant, the wife agreed to accept a certain sum for maintenance, and the deed contained a covenant by her trustees that she should not, nor any one on her behalf, institute any proceeding "to compel her husband to allow her any maintenance or alimony except as aforesaid." The husband regularly paid the maintenance, but subsequently again committed adultery with the same woman as before. The wife obtained a decree for judicial separation:—Held, that having regard to the circumstances known to the wife at the time of the execution of the separation deed, the subsequent adultery of the husband was not such misconduct so affecting the position of the wife as to entitle her to repudiate her contract in the deed, and that she was therefore not entitled to any further sum by way of permanent alimony than the sum agreed to be accepted by the deed.

There is no implied condition in separation deeds that both parties shall live chastely, and therefore the contract in the separation deed is unaffected by the subsequent misconduct of either party.

Semble, there may, however, be misconduct so gross, or of so different a character from that in contemplation when the separation deed was executed, as to disentitle the guilty party to rely upon the deed.

In the case of a judicial separation the Court has not the same power of dealing with settlements, either ante-nuptial or post-nuptial, as in the case of a dissolution of marriage.

Maurice Gandy and Elizabeth Gandy were married in the year 1854. There was issue of the marriage five children, four daughters and one son.

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Previously to 1879 differences arose between M. Gandy and his wife, with reference to acts of adultery committed by M. Gandy, who also was guilty of acts of cruelty towards his wife.

On the 26th of June, 1879, a separation deed was executed between Maurice Gandy of the first part, Elizabeth Gandy of the second part, and trustees of the third part. The deed recited that unhappy differences had arisen between the husband and wife, and their agreement to live separate for the future.

Maurice Gandy covenanted with the trustees to allow his wife to live separate from him, and that he would not require or compel her to live with him, or institute any legal proceedings, or take any other steps for that purpose, and that all property then belonging, or which should belong to his wife, should be for her separate use.

And he further covenanted with the trustees during the continuance of those presents, and if he should predecease his wife, then during her life, subject to the due performance of the covenants therein contained, that he would pay to the trustees, for the use of his wife and her daughters, other than the two youngest daughters, the annual sum of 252*l.*, by monthly payments of 21*l.* in advance. And further, that he would pay to the trustees all the expenses connected with the maintenance and education of the two youngest daughters of himself and his said wife, provided the trustees permitted the said daughters to go to such school as he should from time to time direct, and provided also that the covenants by the trustees were duly observed and performed; it being provided that the said E. Gandy was not to be entitled to the custody of the two youngest children, who were to remain and live at such place as M. Gandy should direct; but both M. and E. Gandy were to have reasonable access to and intercourse with them. M. Gandy was to have the custody and control of the only son.

The trustees on their part covenanted with M. Gandy to indemnify him against all debts and liabilities on the part of Elizabeth Gandy and her two eldest daughters, and all molestation on her or their part,

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and against all actions, claims, demands, &c., on account of such debts or liabilities. "And also that the said E. Gandy, or any person in her behalf, shall not, nor will at any time hereafter, commence or prosecute any suit or other proceeding for compelling the said M. Gandy to allow her any support, maintenance or alimony, except as aforesaid, or to cohabit or live with the said Elizabeth Gandy."

M. Gandy regularly paid all the instalments.

Subsequently to the execution of the deed, M. Gandy renewed his intercourse with the person with whom he had previously committed adultery.

M. Gandy's means had increased considerably since the date of the deed.

E. Gandy filed her petition for judicial separation, and by the decree in that suit, dated the 30th of July, 1881, the President decreed a judicial separation, and gave her until further order the custody of the two youngest children, and directed that such children should spend their holidays with E. Gandy.

On the 5th of December, 1881, an order for permanent alimony was made by the Registrar, ordering M. Gandy to pay or cause to be paid to E. Gandy permanent alimony at the rate of 25*2*l.** per annum, to commence from the date of the final decree in this cause, and to be payable monthly, any payment to the wife since the decree, under the trusts and provisions of the deed of separation, to be considered as part of the alimony payable under that order.

Elizabeth Gandy appealed on the 15th of December, 1881, against that order.

On the 21st of March, 1882, the order of the 5th of December, 1881, was ordered to be rescinded, and leave was given to Elizabeth Gandy "to file a petition for permanent alimony, and to proceed thereon in the usual way, and liberty was given to the husband (respondent) to apply to stay such proceedings if so advised."

On that occasion SIR JAMES HANNEN gave judgment as follows:—

The question which I have to determine in substance is, whether I am precluded by the existence of the deed of separation from investigating the respondent's actual income, with a view to allotting to the

petitioner a larger amount than that named in the deed, or securing that amount to her in some other way than by the deed.

It was not suggested that the deed could afford any defence to the suit itself. The petitioner has thus become entitled to a decree of judicial separation, and the Court has acquired the statutory powers which result from the pronouncing of such a decree, for example, to order the custody of the children to be given to the injured party. In the same way I think the Court has, notwithstanding the deed, power to allot alimony upon the ordinary principles applicable to that subject.

This matter has been under my consideration on previous occasions. It has not been dealt with by the learned Judges who preceded me in this seat. There was no opportunity for them to consider it, and there is not, so far as I am aware, any authority for saying that before the Judicature Act the Divorce Court would have felt itself restrained by the terms of a deed of separation from allowing alimony to the wife to a larger amount or in some other manner than the deed prescribed, in the event of her obtaining a decree for divorce or separation for a matrimonial offence committed by the husband after the execution of the deed. Had such a question arisen, I presume the Court would have left the husband to enforce his rights whatever they might be under a deed, in an action against the trustees, or by a suit in equity, to restrain the wife from suing for alimony, as was in fact done in the case of *Williams v. Baily* (1).

Practically I have to consider what the Court of equity would have done in such circumstances — with this qualification, that in suits for judicial separation I am bound by statute to act and give relief on principles and rules as nearly as may be conformable to the principles and rules on which the Ecclesiastical Court acted and gave relief; and further, that the Judicature Acts only enact that where there is any conflict between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail. The point was discussed but not determined in the case I

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have mentioned of *Williams v. Bailly* (1). There Vice-Chancellor Wood refused to restrain the wife from suing for alimony *pendente lite*, but made her undertake to deal with any order the Divorce Court might make as to alimony as the Court of Chancery might direct. The Vice-Chancellor intimated that he should have held Mrs. Williams bound by the deed if she had sought to enforce it against her husband or had unequivocally asserted her rights under it; but he held that the mere acceptance of the benefits reserved to her by the deed, by taking linen, furniture and wearing apparel, and payment of the allowance, was not sufficient to induce him to grant an injunction against her proceedings in the Divorce Court for the purpose of obtaining alimony *pendente lite*. What became of the cause does not appear, but the proceedings for permanent alimony were continued in the Divorce Court, and the Judge Ordinary made an order on the husband to give particulars of his income—*Williams v. Williams* (2)—so that it would seem that the wife was not restrained; but I do not think that this is an authority from which I can derive much assistance.

It is not necessary to review the cases in which it has been held that a party to a deed of separation, whether husband or wife, is bound by the terms of the deed not to institute a matrimonial suit. The whole subject is very fully discussed by the Master of the Rolls in *Besant v. Wood* (3), which case establishes that where a husband has not "so misconducted himself as to lose his right of specific performance," he may in a Court of equity enforce a covenant contained in a deed of separation that his wife shall not institute a suit for restitution of conjugal rights. And this would probably apply to covenants not to institute other matrimonial suits. In *Brown v. Brown* (4) I had to consider what conduct on the part of the husband would cause him to lose his right to specific performance of such a contract. I may have been wrong, as the Master of the Rolls appears from the report of *In re Besant v. Wood* (3) to have

thought I was, in the conclusion I arrived at in the particular case. But whether right or wrong my judgment there proceeded upon the ground that the husband had been guilty of misconduct (namely, by bringing an unfounded suit for adultery against his wife), which caused him to lose his right to restrain her from asking for a decree of judicial separation upon facts she had proved in answer to his charge of adultery. It would be beside the present question, and I do not desire to enter upon a vindication of every expression used in that judgment, but I have the authority of the Court of Appeal, consisting of Mr. Baron Martin and Mr. Justice Willes sitting with Sir Cresswell Cresswell, for holding that neither the lapse of time since the parties had lived apart nor the execution of a deed of separation was an absolute bar to the wife suing for a judicial separation on the ground of cruelty committed before the date of the deed. And I also had the authority of Lord Penzance in *Williams v. Williams* (2) and other cases for holding that a wife, although she had been for some time living apart from her husband on the terms of a deed of separation, might sue for a judicial separation in respect of cruelty committed before the date of the deed, although of course the deed and the delay must be taken into account in considering whether the wife stands in need of the intervention of the Court.

In the absence of authority upon the point now raised for my determination, I must decide the case in conformity with my own views of the principles which should govern it, and I am obliged to refer to what I said on former occasions.

In *Benyon v. Benyon* (5), after execution of a deed of separation by which the wife allowed her husband 100*l.* per annum, she was guilty of adultery, and the husband obtained a decree dissolving the marriage. I held that he was entitled, notwithstanding the deed, to a variation of the settlement by which he would receive a larger amount than 100*l.* a year out of the wife's income. My observations in that case are *mutatis mutandis* applicable to the present. I there said, "With regard to the second

(5) 45 Law J. Rep. P., D. & A. 93; Law Rep. 1 P. D. 447.

(2) 36 Law J. Rep. P. & M. 39; Law Rep. 1 P. & D. 370.

(3) 48 Law J. Rep. Chanc. 497; Law Rep. 12 Ch. D. 605.

(4) Law Rep. 3 P. & D. 202.

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objection as to the deed of separation under which the husband was to have an allowance of 100*l.* per annum, I am of opinion that the husband is not precluded, by the fact that he accepted such a sum, from taking these proceedings. I am in complete ignorance of the circumstances under which that deed was executed, but it is obvious that a husband who for some reason or other has agreed that his wife shall live apart, there being no ground for seeking a dissolution of marriage, may be willing to accept a small sum out of the wife's income rather than expose in public their matrimonial differences. The case is very different if after a separation of this kind the wife is guilty of conduct which entitles the husband to have the marriage dissolved. He may have been content with a small portion of the wife's income while she retains the character and position of his wife, and at the same time may reasonably object to an adulterer enjoying her property and the income thereof in her society. It would be of evil example and morally dangerous if the wife's pecuniary position could not be altered by reason of her adultery subsequent to her husband's acceptance of an allowance. In this changed condition of things I think the husband is entitled to ask for a larger allowance than he agreed to accept at the time of the separation."

The point came before me again in the case of *Morrall v. Morrall* (6). There the suit was by the wife. After the execution of the deed of separation, by which trustees covenanted on behalf of the wife, as in this case, that she should not take any proceedings to compel the husband to allow her anything except the sum covenanted by the deed to be paid to her, the husband was guilty of incestuous adultery, and a decree of dissolution of the marriage was pronounced. I held that the wife was entitled to an allowance based on the husband's actual income.

It was argued that these cases were not applicable because in each of them the marriage of the parties was dissolved, and thus a change of their status was effected. But if the reasons on which my judgment in these cases rests are well founded, I am

of opinion that they are equally applicable when the wife has become entitled to a decree of judicial separation. The decree of dissolution does not in itself put an end to the deed. But I held in *Morrall v. Morrall* (6) that the deed was executed on the basis of the facts which existed at its date, and that the subsequent adultery of the respondent created a different state of facts, which was not in contemplation of the parties when entering into the deed, and that therefore the petitioner was no longer bound by it; or, if another way of putting the case be preferred, I held that subsequent adultery of the respondent was such misconduct as deprived him of the right to have the restraining provisions of the deed enforced. After much consideration I remain of opinion that to adopt the opposite conclusion would not only be to make the general words of the contract extend to a state of things not in the contemplation of the parties, but would lead to results in a high degree prejudicial to morality. It would be in effect to hold that a husband who has entered into an agreement with his wife to live apart, making a certain allowance, obtains thereby a licence to commit adultery for the rest of his life without subjecting himself to any liabilities beyond those imposed by the deed. It appears to me that in all cases such as this it is implied in the contract contained in the deed that it has reference only to the parties living separate, without more, and not to their living apart in a state of adultery. It has been held that an ordinary deed of separation such as this does not amount to a licence to commit future adultery—*Sullivan v. Sullivan* (7)—and where the deed does in fact give such a licence, it amounts to connivance, and would be a complete bar to the suit—*Thomas v. Thomas* (8). A deed of separation like the present must therefore be construed in this Court as an agreement that the parties shall live apart in chastity, and I cannot think that if such had been the language of the deed, a Court of equity would have restrained a wife from taking proceedings for alimony upon facts like the present. An injunction to restrain legal proceedings was formerly granted on the

(6) 50 Law J. Rep. P.D. & A. 62; Law Rep. 6 P.D. 98.

(7) 2 Add. Ec. Rep. 303.

(8) 2 Sw. & Tr. 113.

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sole ground that it was against conscience that the party inhibited should proceed in the cause.

If I am right that the deed contemplates that the parties will live in chastity, it cannot be said that it is against conscience that the wife should insist that, as her husband has violated an implied condition of the bargain, she should not be restrained from asserting her rights independently of it. It was further argued that in the present case the wife obtained a provision for her life, and that the Court could only give her alimony during the joint lives of herself and her husband. In cases of judicial separation the Court has power by section 17 to make any order for alimony which shall be deemed just. But, even if the Court had not the power or were not disposed to secure an annual sum to the wife for her life, this would not affect the present question; the husband can be required during his life to pay a larger sum than 252*l.* per annum, or secure the wife's allowance otherwise than by the deed. The wife may be put to her election which of the two provisions she will accept, or a difference may be made in the amount to be paid to her, during her husband's life, if any payment shall remain secure to her after his death. These are questions which will be dealt with when the amount and nature of the husband's means have been ascertained. For these reasons I am of opinion that the enquiry as to the respondent's means should proceed. Some doubts were raised at the hearing as to the form of the proceedings; but it was agreed by counsel that in the event of any decision being in favour of the wife, she should be at liberty to file her petition for permanent alimony, and that the respondent should be at liberty, if so advised, to appeal at once from this order.

From this decision M. Gandy appealed.

Robinson, Q.C., and *C. A. Middleton*, for the appellant.—The question is a new one—how far a wife, who has executed a separation deed containing a covenant by her trustees that she shall not prosecute any claim for further alimony, and she having accepted for over eighteen months the benefits under the deed, is entitled, in a suit for judicial separation brought since the deed,

to sue for further alimony? The judgment of the President is based on the assumption that there is an implied condition in a separation deed that it shall only be in force so long as both parties are chaste, and that therefore the wife is, by the subsequent adultery of her husband, relieved from all liability under it. At law, clearly, the validity of the deed is unaffected—*Jee v. Thurlow* (9).

[JESSEL, M.R.—We do not require authority for that at law].

The case of *Williams v. Bailly* (1), a case of equity, where there was an analogous covenant, seems to shew the view of the Vice-Chancellor that, had there been any acceptance of the deed by the wife, such as there is here, she would have been prevented from applying for further alimony. In *Evans v. Carrington* (10) Lord Campbell, L.C., said that he did not think that the deed of separation, if valid when executed, was invalidated by the subsequent adultery. Here the deed was valid at its execution—the wife knew of her husband's adultery. So, too, *Marshall v. Marshall* (11), referred to by the Master of the Rolls in *Besant v. Wood* (3), is an authority that a wife will be bound by a separation deed from bringing a suit for the restitution of conjugal rights.

The case of *Morrell v. Morrell* (6) differs from this, because there the Court had pronounced a dissolution of the marriage, and the Court has in such a case a power to alter settlements, whether antenuptial or post-nuptial—as a separation deed is treated as being—but there is no such power in the case of a judicial separation.

Inderwick, Q.C., and *T. Tatham*, for the respondent.—We only now ask for an inquiry as to the means of the husband.

The appellant, who has been guilty of subsequent adultery, is, in fact, asking specific performance of the covenants in the deed, which a Court of equity, however a Court of law may have been bound by the deed, will not grant him.

We submit that the view of the President is correct—that in this Court, at all

(9) 2 B. & C. 547.

(10) 2 De Gex, F. & J. 481, 492.

(11) 48 Law J. Rep. P.D. & A. 49; Law Rep. 5 P.D. 19.

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events, subsequent misconduct on the part of either party, which was not in the contemplation of the parties at the execution of the deed, will release the other party from liability under the deed.

By section 17 of the 20 & 21 Vict. c. 85, the Court may, in suits for judicial separation, make such order for alimony as it thinks just. Here the husband's fortune has increased considerably, and the wife, by the order in the suit for judicial separation, has now the two youngest daughters given to her custody.

Middleton, in reply, cited *Kendall v. Webster* (12).

JESSEL, M.R.—This case raises a point at once novel and important. A separation deed was executed between husband and wife, after the husband had committed adultery to the knowledge of the wife, and thereby caused differences and quarrels between the husband and wife which led to acts of cruelty, or legal cruelty, on the part of the husband towards his wife; but the origin of the separation was the adultery of the husband. The husband by that deed, not being at that date in such prosperous circumstances as he is in at present, agreed, after providing for the maintenance of the children, to allow his wife 25*l.* a year, and she agreed that she would not, nor should any person on her behalf, at any time thereafter commence or prosecute any suit or other proceeding for compelling the said Maurice Gandy, the husband, to allow her any support, maintenance or alimony except as aforesaid, or to cohabit or live with the said Elizabeth Gandy.

At a subsequent period the husband renewed his intercourse with the woman with whom he had previously committed the adultery which had led to the separation, and the wife instituted a suit for judicial separation in the Divorce Court and obtained a decree. She was entitled to institute this suit, because, as she said, she was deprived by the deed of the custody of her two younger children who were to be maintained by the husband and kept in school, and she claimed the right to have the custody of them, and obtained an order to that effect.

(12) 1 Hurl. & C. 440; 31 Law J. Rep. Exch. 492.

Probably, considering that the two children were girls and the mother was free from all blame, it would have been impossible to interfere so as to prevent her from commencing and continuing her suit to a successful conclusion, having regard to her rights as regards those children, and having regard to the benefit of the children themselves. But the husband remained liable under the deed for the maintenance of the younger children. There is another motive, which, to my mind, is a very plain one, for the institution of these proceedings. It appears that the husband, some time after the deed, made an invention which has turned out very successful and has brought him in a considerable fortune, and it is obvious that this increase of fortune was also an inducement to the institution of this suit for judicial separation on the part of the wife. And after arrangements had been made as to the custody and maintenance of the children, an application is made by the wife for permanent alimony, which was granted in substance, though not in form, by the order appealed from. I say in substance because the case was argued on the merits. It was not argued merely on the question as to whether the Court should be put in possession of the facts as regards the husband's fortune before coming to a conclusion, but it was argued on the assumption that the husband's fortune had now become considerably larger than it was before, and if the wife succeeded in the application as to the means of her husband, she would have succeeded in the application for an increase of alimony. On that footing the Judge below has decided that, by reason of the subsequent adultery of the husband under the circumstances I have mentioned, the wife was entitled to apply for and obtain a larger sum by way of alimony than the 25*l.* allowed her by the deed. The question is, whether that was a right decision on the part of the learned Judge of the Court below, having regard to the facts I have mentioned.

The first point to be considered is, that the contract made by the deed of separation cannot be affected by the subsequent adultery of the husband. The husband remains liable under the covenant whether he has been guilty of it or not, and would in fact

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remain so even if his wife had committed adultery. That is settled law. The Legislature has not thought fit, in the case of judicial separation, to give the Court the same powers that it has given in the case of dissolution of marriage. Upon dissolution of marriage the Court has had conferred upon it the right to vary not only post-nuptial, but ante-nuptial settlements, and therefore to deal with them in any way which it may think just and expedient. But in the case of judicial separation, there being no such power, the deed remains binding. The wife is entitled to the annuity secured her by the deed. The husband is liable to pay the annuity. It is impossible, therefore, for the Court to allow such alimony as it may think just, because, in the case of its thinking that the amount of alimony should be less than the annuity secured by the deed, it has no power of setting aside the deed, and no power to stop an action brought under the covenants of the deed by the trustees against the husband. It is therefore a case where the ordinary powers of the Court can only be exercised in one direction—namely, by increasing the amount of alimony. That being so, we must consider if there can be such a case of contract interfered with by the Court in the exercise of a discretion, except where one of the parties to the contract has so acted as to disentitle him to rely upon the contract at all. I am not saying that there may not be such a case, on the contrary I can quite conceive such a case. But unless you come to that, why should the Court interfere with the contract at all? I see that the Judge has based his decision on the ground of public policy. I have explained more than once, and especially in a case which has been referred to by the learned Judge himself of *Besant v. Wood* (3), that there is no reason more dangerous to give, and no reason on which graver difference of opinion exists than on that of public policy.

He has said that if you do not allow the wife to apply for increased alimony in such a case as this, you allow the husband to commit adultery with impunity. I am by no means prepared to say that is right. It is not impunity simply because he is not obliged to pay more money. No doubt he may be to some extent relieved from the

liability under the contract, but that is a contract by which he is compelled to pay an amount, having regard to his then state of fortune, which may be much larger than it ultimately becomes, for his fortune may diminish. It does appear to me a very strong thing to say that, by his committing an act which does not affect the wife directly or indirectly, her rights to participate in his fortune should be altered.

In the present case how is the position of the wife affected at all? She was separated *de facto* before the institution of the suit. Her maintenance was the same whether her husband did or did not live with another woman. Her right in every respect was unaltered. It may be said, no doubt, in one sense that her position was affected, because he would be less likely to return to cohabitation. But persons who execute deeds of separation like this are not presumed to imagine that renewed cohabitation is very probable. It does not appear to me, looking at what occurred before the separation, considering the age and respective positions of the parties, and considering what the husband has done since, that you can say that he is in such a position as to have forfeited all his rights under the deed, being left at the same time subject to all its liabilities.

It seems to me that, having regard to the relative positions of the husband and wife, there has not been such misconduct on the part of the husband so affecting the position of the wife as to entitle her to repudiate the contract she entered into. The contract, therefore, is still binding, and the appeal must be allowed.

COTTON, L.J.—In this case there has been an application by a wife under which she has obtained a reference to inquire into the fortune of her husband for the purpose avowedly of obtaining maintenance otherwise than under the separation deed, and that in defiance of one of the covenants contained in that deed. The question may be put in two ways—one, whether this covenant can be disregarded, or whether a Court of Equity could have enforced under the circumstances this covenant against the wife.

I do not intend to give an opinion on the latter view of the question, because in

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my opinion it is not necessary to decide it; but I am far from saying that the Court of equity would not in former days have interfered by injunction to restrain such an application as this made by the wife. But the learned President seems to have decided this matter really on principle, which would lead to the conclusion that the deed is bad altogether at law, which it clearly is not, because he has said that it must be read with an implied qualification that it shall be operative so long as the parties shall live chastely, and to hold that the present appellant was right would be to say that this deed contemplated and allowed adultery on the part of the husband. In my opinion that is erroneous, and I cannot agree with such a conclusion. The question is whether under the circumstances the misconduct of the husband is such misconduct towards the wife as, having regard to the circumstances known to her at the time the deed was entered into, entitle her to say that this covenant is not to be regarded as against the application for alimony. Whether you are to take it as an application under the statute to give her such allowance as is just, or independently of the statute—of course the question is the same, what allowance it is just to make to her—in my opinion, unless the conduct of the husband has been such since the deed as entirely to prevent him from using that deed in answer to the application of the wife, it must be taken into account, whichever way you look on it in ascertaining, even if the application were not restrained by a Court of equity, what allowance is just to be made.

The conduct here of the appellant towards his wife is of the same character and nature as that of which she was aware when she entered into the deed, and it is not suggested that there was any misrepresentation made to her which would induce her to take this 25*l.* as an allowance.

It is said, and it seems to me to have some bearing on the question, that she has two children with her whom she had not before. But that is not so. The husband still remains liable by the covenant to provide for the two younger children, and they are still left at the school pointed out by him. All she has is that she is to have them during the holidays, leaving her

husband still liable for their maintenance and making due provision for them.

In my opinion the conduct of the husband since the deed has not been such as, having regard to what was known to the wife at the time she entered into the deed, to disentitle him from relying on the deed. I put it this way because I quite agree with the Master of the Rolls that we ought not to say, and I do not entertain the opinion, that there can be no misconduct on the part of the husband such as would disentitle him to set up a deed of separation of this kind when the wife is making an application for increased allowance.

The case of *Morrall v. Morrall* (6), which has been referred to by the learned Judge as leading to the conclusion at which he arrived, is an instance. There there was a deed of separation with a provision as to what maintenance the wife was to have. She subsequently ascertained that he was living in incestuous adultery, a fact unknown—that is to say, there had been no incestuous adultery—at the time the separation deed was entered into. There may well be such a circumstance—such gross future misconduct—of a nature so entirely different from that which was provided for when the parties entered into the deed of separation as to preclude the husband from in any way relying on that deed, or as to render it just that the wife should disregard the bargain she made for maintenance. Here I do not think the circumstances are such as to entitle the wife to disregard the deed.

LINDLEY, L.J.—The question we have to consider can be put in this shape—whether any sufficient reason has been given for holding the wife discharged from her covenant not to sue for further alimony. *Prima facie* she is bound; she is bound by it at law—in the Divorce Court and also in this Court—whatever difficulty there may be about specific performance or injunction. It is a perfectly good covenant. The order appealed from does not give effect to the covenant, but sets it aside; and the question is whether, under the circumstances, that is right. The statutory power of dealing with this question of alimony is given by section 17 of 20 & 21 Vict. c. 85.

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This being a suit for a judicial separation as distinguished from a dissolution of marriage, the power of the Court over these deeds is very much less than it would be if it were a suit for dissolution of marriage. It is a much more restricted jurisdiction and power, and it appears to me that the other cases, of which *Morrell v. Morrell* (6) is one, where the Divorce Court has power to deal in cases of divorce with separation deeds, and to set them aside, are rather misleading when they are applied, or sought to be applied, in a case where the Court has no such extensive jurisdiction. Now the language of the 17th section as regards alimony is this: "where the application is by the wife the Court may make any order for alimony which shall be deemed just." That must be taken as meaning, "just under the particular circumstances of each particular case," and one of the most important circumstances in any case is the bargain between the parties, and if the parties have agreed that a certain sum shall be sufficient, *prima facie* that is just, and *prima facie* the Court cannot increase or diminish it. I do not understand that the Court can diminish it under any circumstances. I doubt very much whether it could; that is, whether under the language of the 17th section the Court could say that less than 25*l.* was just. Then, if that is so, the analogy between the statutory power of dealing with alimony under the 17th section, and the statutory power of dealing with separation deeds under the divorce sections, fails altogether. It is limited in one direction and not in the other if that section is to be read in the way in which it appears to me to have been read by the learned President.

It strikes me, on the whole, that the case is reduced simply to this, when there has not been on the part of the husband any misconduct towards the wife since the separation deed except the renewed adultery, and when there is no reason whatever that I can see, now that we understand the position of the children, for her seeking judicial separation except as a means of getting further alimony—whether under those circumstances the fact of the adultery is itself sufficient to deprive the husband of the benefit of the stipulation

as to alimony. I do not think it is, and therefore I agree with the other members of the Court that the order appealed from must be discharged.

Order discharged. Husband ordered to pay the costs.

Solicitors—Gregory, Rowcliffes & Co., agents for Stone, Fletcher & Hull, for appellant; W. & A. Ranken Ford, for respondent.

PROBATE.	} MORRELL AND OTHERS v. MORRELL AND OTHERS.
1882.	
Feb. 11.	
March 14.	

Will—Mistake—Insertion of Word without Knowledge of Testator—Omission from Probate.

Where a word is proved to have been inserted in a will without the knowledge and authority of the testator, it will be omitted from the probate.

A, being possessed of four hundred shares in a certain company, instructed his solicitor to prepare his will, and directed that all his shares in the company should be bequeathed to his four nephews. Through inadvertence the will was so drawn as to purport to bequeath only forty shares to the four nephews. The will was not read over to the testator before execution, and he never knew that the word "forty" had been inserted.

The Court granted probate of the will, omitting the word "forty" wherever it occurred.

Fulton v. Andrew (44 Law J. Rep. Prob. & M. 17; Law Rep. 7 H.L. Cas. 448) followed.

John Morrell died at Birkdale, Lancashire, on the 16th of June, 1881, having duly executed a will on the 19th of January, 1880, and a codicil thereto on the 11th of June, 1881. Both these instruments were propounded by the four plaintiffs, who were the nephews of the deceased.

The statement of claim alleged that the

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testator had bequeathed to the plaintiffs all his fully paid up shares in a joint stock company, called "John Morrell & Company (Limited)," but that the word "forty" had been inserted in the will, thus limiting the number of shares bequeathed to the plaintiffs; and that the word had been inserted by mistake and without the knowledge and authority of the testator. The plaintiffs asked that the word "forty" might be omitted from the probate of the will wherever it occurred.

The defendants—who were the executors appointed by the will—and the residuary legatees denied in their statement of defence the allegation that the word "forty" had been inserted without the knowledge and authority of the testator.

The case was tried before the President of the Division and a special jury.

Inderwick, Q.C., and C. A. Middleton,
for the plaintiffs.

Sir H. S. Giffard, Q.C., and Bayford,
for the defendants.

Dr. Deane, Q.C., and H. B. Deane,
for the residuary legatees.

It appeared that the testator had formerly carried on an extensive business as a provision merchant at Liverpool, with branch establishments at several other places, and that, about two years before his death, the concern had been converted into a limited company, bearing the title of "John Morrell & Company (Limited)." The testator was the chairman of the company, and the holder of 400 B shares, which were fully paid up, and which represented the sum of 40,000*l.* His four nephews—the plaintiffs—who had formerly assisted him in the business, were appointed officers of the company.

Mr. William Alfred Jevons, solicitor, of Liverpool, was called as a witness, and stated that the will of the testator had been prepared by him; that the testator had expressed his wish to bequeath an annuity of 1,000*l.* a year to his wife, with various annuities and legacies to other parties; and had also directed that all his B shares in "John Morrell & Company (Limited)" should be bequeathed to his four nephews to enable them to conduct the business of the company. After receiving these instructions the witness pre-

pared a draft will, which he afterwards sent to a conveyancing counsel in London to be settled. In his draft he had used (with reference to the bequest to the testator's four nephews) the words "all my B shares," but the counsel who settled the draft had inadvertently inserted the word "forty" after "my." Mr. Jevons further stated that when he read the will as finally engrossed for execution he noticed the word "forty," but that it did not then occur to him that its insertion was material.

He also stated that the testator, at the time when he executed the will, was very ill, and the whole of the will was not read over to him.

The effect of Mr. Jevons's evidence is more fully stated in the summing-up.

The widow of the testator had been examined by commission, and had sworn that both before and after the date of the will he had told her that he had left shares in the company to the value of 10,000*l.* to each of his nephews; and evidence to the same effect was given by another witness.

The PRESIDENT (SIR JAMES HANNEN), in summing up the case to the jury, made the following observations: This case, though it may appear simple in itself, is one of very great importance with reference to other cases hereafter, in which the facts may not be so clear as they appear to be here. There can be no graver question brought into a Court of law than the question, What is a man's last will? when he is dead and no longer able to speak for himself, and his property has to be distributed according to the particular words that have been used in a particular instrument. The law has established certain rigid safeguards in order to have attested evidence of what such intention was; and no amount of proof that a man intended to give A or B the whole or part of his property avails. He must put his intentions in writing, and that writing and his signature to it must be attested by two witnesses. If, therefore, a mistake is made, it matters not how plainly, in leaving out words, however much we may regret their omission, we cannot, after his death, correct that, because his

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intention would not have been put into writing and attested as the law requires.

There is a second class of mistake which may be put at the other extreme—that is, where words are inserted of which the testator knows nothing. To take a familiar instance. Suppose people about the testator at the time of his death fraudulently take his instructions to leave his property to certain persons, introduce into the will their own names instead, and say, "I leave to Tom Smith 10%," &c., and never read that to him. In that case you may strike out the passage, because he did not know it was there or intend that it should be, and therefore it was not his will in any sense of the word. But there is a middle case, and this is somewhat of that kind. It is the case of a man who feels himself unable to express his intentions in a legal and formal manner or phrase, and who confides to somebody else the duty of expressing them. I should say that, in the majority of cases where a lawyer is employed, that is the state of things. The testator prefers to rely on the judgment and skill of a trained mind to express his wishes rather than to run the risk of selecting words himself; and when that is the case he adopts the words used by that person just as though they were his own. There is also a difference between the case of his referring it to a particular person to express his wishes and that person making the mistake, and himself knowing what his own wishes are and setting about to express them and making a mistake. He might foolishly attempt to use technical language. If, for instance, he had put down heir-at-law when, in fact, he meant next-of-kin, he must bear the consequences; and so, if he trusts to anybody else to express his wishes and adopts the words used by that person as his own, then that alone can remain as the evidence of his intention. You must bear these observations in mind while I comment on the particular questions which I trust will lay the foundation for a clear, if not perfectly satisfactory, conclusion in this case.

As the case is presented in the pleadings, the alleged mistake is that the word "forty" has been introduced throughout the will before the word "shares." In

order to see whether there was the particular mistake of the insertion of the word "forty" before "shares," or whether there was any other mistake in the drawing up of that clause, it is well to look, in the first instance, to the instructions which were given by the deceased to Mr. Jevons. In that document there is no mention whatever of the number of shares; but the testator's property, which we now know was of the value of 40,000*l.* in the company, is spoken of simply as his shares. There is no mention of anything but shares, and that continues throughout all the documents down to the time when the draft is sent back by the counsel to Mr. Jevons. The instructions or directions to counsel to draw the will also only mention "shares," without any reference to number; but, from some cause or other which is not explained, the counsel who drew the will inserted into his draft the word "forty" before "shares" wherever it became necessary.

The first question I ask you is, Was there a mistake at all in that? Now the evidence of Mr. Jevons is quite clear upon the subject, that whenever the matter was discussed the reference was to the whole number of the shares as being intended for the nephews. The wife, whose deposition has been read, is equally clear: that her husband always spoke of the whole of his shares as intended for his nephews, and a friend has been called who speaks to the same effect. I should imagine, therefore, that you would come to the conclusion that there is a mistake in the manner in which that clause is drawn. But that leads to the second question—namely, Whether the mistake was in putting in the word "forty" at all and in not leaving it as it was in the instructions, "my shares in the company"; or does the mistake consist in not having put in the proper number, four hundred, instead of forty? It is true that if four hundred had been put in it would, we know, have correctly carried out the intention as Mr. Jevons and the wife believe it to have been; but it is not because it would, in fact, have carried out his intention that therefore that is the way it should have been expressed in his will; and I should say that the more correct

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way of drawing a will from such instructions as these is not to insert a number which may lead to a mistake, as you see it has done in this unfortunate case, but to use the general words which prevent the possibility of a mistake—namely, by saying “all my shares,” or “the shares,” which equally implies it. Did, then, the mistake consist in inserting any number or in not inserting the proper number?

The third question which I leave to you is, Did the testator know of the inserting of the word “forty”? In considering this question bear this particularly in your minds—Did he know of the fact that the word “forty” was there? That depends on Mr. Jevons's evidence, and I am sorry that we should be left in some uncertainty as to what really took place. Mr. Jevons went on the 10th of July with the draft which had been prepared by counsel, and so fully did it to his mind embody the wishes of the testator that he, as a matter of prudence, had it then and there executed; and the question is, Did he read that document over to the testator? I am sorry to say Mr. Jevons is not able to say whether he did or not, but you will remember that he himself said that would be the usual course; but at the present moment he says, “My recollection is indistinct upon the point as to the extent to which I went into the draft will with the testator.” But he speaks with confidence as to the following: “I read the passages which made alterations in the draft which he had had in his possession.” I am sorry we have not more distinct recollection of what took place. I can only say it seems most unusual not to do one or other of these two things—namely, either to read over the whole of the documents which the party is about to sign, or to go through it, passage by passage, and say there is a clause to this effect and a clause to that effect, and so on. In some states of a testator's health, or in some states of a testator's mind, disturbed by pain, it might be expedient to shorten the process; but in some way or other, so far as my experience goes, I should say it is the practice of solicitors either to read over the whole instrument, or to read and explain, clause by clause, the effect that each clause would have.

Unfortunately Mr. Jevons does not enable us to judge by his evidence what course he did pursue, and you have to draw your inference; but, remembering that this was the document which he then got the testator to sign as a valid will, it will be for you to say whether you do not come to the conclusion that Mr. Jevons did either, by reading the whole, or in some way or other call his attention to the several matters of his will. He does say he read the passages which made alterations in the draft which he had had in his possession. But then there comes a very important fact: he called his attention to the question of the legacy duty, and that is repeated twice over in the will. He had the draft with him, and he says that as to one of these alterations in which the word “forty” occurs, he made it himself upon the draft. As to the other, he is rather under the impression that he made it at his office, for the purpose of making the one part of the draft consistent with the other. But with regard to that alteration which he made at the time, you will have to say whether you do or do not believe that he read that passage to him in which the word “forty” undoubtedly occurs. Therefore, the two questions which you have to consider as to that are, Did he read or bring to the testator's notice the one particular instance in which, at any rate, the word “forty” was inserted before “shares”?

Upon the fourth question, “Did he approve of the words used as the expression of his wish?” I must more fully explain what I have already suggested. When you employ a lawyer to draw either a will or a deed which requires skill, you rely on his skill, and, of course, you rely on his integrity; and when he tells you, “I have drawn this will according to your instructions,” and he puts it before you to sign, do not you adopt his words as expressing your wish? I do not wish, as far as this is a question of fact, to take it out of your hands; but speaking for myself, it appears to me the man does approve of the words which his solicitor puts in for him; and this seems to divide itself again into two parts: Did he approve of the particular words being used, as the expression of his will—that is, did he ap-

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prove of such passages as his attention was particularly directed to; or generally, did he approve the whole will, as expressing his wishes? When a man leaves his solicitor to draw a will, does he not say in effect, "I do not know how to do it. I rely on you, and I accept your words as though I had the power to do it."

The next question is, Did he understand the effect of the words? He was a man in failing health and nervous, and business had become so distasteful to him that he did not open his letters. Mr. Jevons himself also in two instances wrote the word "forty" in with his own hand, and did not understand or notice what the effect was. You probably therefore would come to the conclusion that the testator was equally as wanting in observation as Mr. Jevons, and did not understand the meaning of the words.

Lastly, Did he intend his nephews to have all, or only the forty shares? That is a question upon which probably you will have no difference of opinion; but I have put the question in order that we may have, as far as counsel and myself can foresee, everything that may be necessary for determining the law of the case, after you have decided the facts.

The jury found as follows: first, that the words were inserted by mistake; secondly, that the particular mistake was in inserting the word "forty"; thirdly, that the testator did not know of the insertion of the word, and that the will was not read over to him; fourthly, that he did not approve of the word being used—that is, that he instructed his solicitor as to the whole of the shares, and only approved of the draft upon the supposition that the solicitor had carried out his wishes; fifthly, that he did not understand the effect of the words used; sixthly, that he intended the nephews to have all the shares.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on March 14).—I postponed my judgment in this case because I thought that a case which was pending before the Privy Council would have some bearing upon the question; but as the decision there ap-

pears to have been based upon a different point, I will proceed to give my judgment upon the facts as proved at the trial.

The finding of the jury has disposed of the whole matter; and by the light of their verdict it appears that the testator intended to leave all his shares in a particular company to his four nephews; and he gave instructions to that effect to his solicitor, who embodied them in writing, and sent them to a conveyancing counsel in London, with instructions to settle the will. In the instructions for the will the solicitor (as directed by the testator) had used the words "all my B shares," but in drafting the will the counsel inadvertently introduced the word "forty" after "my." Although the solicitor saw this it never attracted his attention, and he did not realise the effect which the word "forty" would have upon the disposition of the shares. He said, and the jury arrived at the conclusion that what he said was correct, that he never informed the testator that the word had been introduced, and it was proved by other evidence that the will was never read over to the testator. The jury found that the latter never authorised the insertion of the word "forty," and that he signed the will in the belief that it had carried out his intentions, which were that all his shares should be given to his nephews.

The case of *Harter v. Harter* (1) was cited, where I held that where the testator had seen the words of his will and adopted them, the language could not be changed so as to conform to his proved intentions. The circumstances of this case are different; but I think they come within the decision of the House of Lords in *Fulton v. Andrew* (2). It was there held that where a clause in a will—the case before the House being one of a residuary bequest—has been introduced without the knowledge and authority of the testator, it may be rejected. The same principle must, of course, be applicable in the case of a single word which has been inserted without his knowledge and authority; and, therefore, following *Fulton v. Andrew* (2), I direct

(1) 42 Law J. Rep. Prob. & M. 1; Law Rep. 3 P. & D. 11.

(2) 44 Law J. Rep. Prob. & M. 17; Law Rep. 7 H.L. Cas. 448.

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probate of the will to issue, omitting the word "forty" wherever it occurs. Fortunately that leaves no ambiguity in the will, which will read just as well without the word. The costs will be paid out of the shares.

Solicitors—Field, Roscoe & Co., agents for Bateson & Co., Liverpool, for plaintiffs; Sharpe, Parkers, Pritchard & Sharpe, agents for Jevons, Ryley & Style, Liverpool, for defendants; Walker, Son & Field, agents for Field & Weightman, Liverpool, for the residuary legatees.

DIVORCE. }
1882. } WILLIAMSON v. WILLIAMSON
Feb. 21. } AND BATES.

Desertion—Divorce—Conviction of Wife for Felony.

A wife who had before her marriage been a domestic servant was, within a month after the marriage, sentenced to six months' imprisonment for larceny. Upon the expiration of her sentence she returned to domestic service, and she afterwards requested her husband to resume cohabitation, but he refused to do so, on account of her conviction. Two years afterwards he discovered that she was living in adultery, and he then commenced a suit for a dissolution of marriage:—Held, that the petitioner had not been guilty of desertion conducing to his wife's adultery.

Seemle that the conviction of a wife for a criminal offence will not justify her husband in refusing to cohabit with her, and that, if his refusal to do so conduces to her adultery, he will not be entitled to any relief.

This was a husband's petition for dissolution of marriage. Neither the respondent nor the co-respondent had appeared, and the case was tried before the President of the Division without a jury.

The parties were married in 1879, the respondent having previously been a domestic servant. About a fortnight after the marriage she was apprehended upon a charge of larceny, and she was afterwards sentenced to six months' imprisonment.

Upon the expiration of her sentence she returned to domestic service, and soon afterwards requested the petitioner to resume cohabitation, but he refused to do so, because she had been convicted of felony.

The petitioner saw nothing of his wife for two years, when he discovered that for a year and a half she had been living in adultery with the co-respondent, and he then commenced the present suit.

Searle, for the petitioner.

THE PRESIDENT (SIR JAMES HANNEN).

—The conviction and imprisonment of a husband or wife for an offence against the criminal law is no justification to the other party for refusing to live with him or her. However painful it may be for a respectable man to have a wife who has been convicted of felony, such conviction will not justify him in this Court for having deserted her. It sometimes happens that wives leave husbands who have been convicted of infamous crimes, and yet those husbands are legally entitled to cohabitation with them. In this case I have to consider, not only whether there was desertion by the husband without legal excuse, but also whether that desertion has tended to bring about her adultery. It appears that, after coming out of prison, she did not go to her husband, but returned to service, and got a living in the manner she had done before her marriage, and that after his refusal to receive her she again returned to service. I do not think, therefore, that the refusal of the husband to resume cohabitation with the respondent at the time she presented herself to him can be said to have conduced to her adultery, and therefore I pronounce a decree *nisi*, with costs against the co-respondent.

Solicitors—Botterell & Roche, for petitioner.

ADMIRALTY. }
1882. }
April 19, 25. }

THE DOUGLAS.

Damage by Collision—Wreck—Liability of Owner.

When a vessel has been sunk in a navigable river, it is the duty of the person who has the possession, management and control of her, to take precautions to prevent other vessels from being injured by the wreck, and he will be liable for any injuries received by other vessels from the wreck, if they could have been prevented by reasonable skill and care on his part.

This was an action by the owners of the steamship *Mary Nixon* against the owners of the steamship *Douglas* for damage by collision. The *Douglas*, by her unskilful navigation, came into collision with the steamship *Duke of Buckingham* in Gravesend Reach about 5.30 on the 27th of October, 1881, and sank soon afterwards. At midnight the *Mary Nixon* came into collision with the wreck. Immediately after the first accident the owners of the *Douglas* communicated with the underwriters, in order that they might take proper measures to have the vessel raised and repaired.

Butt, Q.C., and *Gainsford Bruce*, were for the plaintiffs.

Myburgh, Q.C., and *Bucknill*, were for the defendants.

The facts and questions arising in the case are sufficiently shewn by the following judgment :

SIR R. J. PHILLIMORE.—This is an action for damages, in consequence of a collision between the screw steamship *Mary Nixon* and another screw steamship, the *Douglas*. It occurred in Gravesend Reach, at midnight on the 27th of October, 1881. The *Douglas* had previously come into collision with the steamship the *Duke of Buckingham*, and had in consequence sunk.

It is admitted that the collision with the *Duke of Buckingham* was due to the negligent navigation of the *Douglas*. At the time of the collision between the *Mary Nixon* the *Douglas* was lying sunk

in the river, about mid-channel, with one of her masts above water.

The contention of the *Mary Nixon* was that it was the duty of the *Douglas* to warn approaching vessels of the wreck, and that no such warning was given, and therefore that she was responsible for the damage.

The defence of the *Douglas* is, that a white light was placed in her main rigging within a reasonable time, that the *Mary Nixon* was warned by hailing from another vessel in sufficient time to enable her to avoid the *Douglas*; and, as an alternative defence, that the defendants had wholly ceased to have possession, management or control of the *Douglas*, and therefore were not responsible.

To deal first with the facts :—

I am of opinion that no hailing is proved. I have consulted the Trinity Masters, and I agree with them, that a reasonable time had elapsed between the collision with the *Duke of Buckingham* and the collision with the *Mary Nixon*, for giving some warning to approaching vessels of the position of the *Douglas*, and that the means for such warning could have been obtained without difficulty.

It appears that a light was put up in the main rigging of the *Douglas* after her collision with the *Duke of Buckingham*, which light remained till the *Douglas* sank; but at the time of the collision with the *Mary Nixon* there appears to have been no light exhibited and no kind of warning given.

I have now to deal with the question of law arising on these facts :—

The plaintiffs contend that the *Douglas*, having had her lights knocked out by the previous collision, was bound to adopt some measures of warning, by lights or otherwise, to approaching vessels.

The defendants say, that there being no persons left on board the *Douglas*, it was not the duty of any private person to give such warning, but that it became a matter for the intervention of public authority, as that, during the period between the crew leaving the ship and the intervention of the public authority, the risk, however unfortunate, must be borne by the public—that in this case, although there was an *animus revertendi*, still the control and

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possession of the ship had been given up.

I confess I listened to this argument with great alarm; the consequences of such a doctrine are fraught with danger to the interests of navigation, and also to human life. It is, however, not necessary, with the view which I take of this case, to decide the exact point where the private obligation ends, and that of the public authority begins. Two cases were relied upon—*Brown v. Mallett* (1) and *White v. Crisp* (2).

The principle of law applicable to cases of this description appears to me to be contained in the judgment of Baron Alderson in *White v. Crisp* (2), citing the opinion of Mr. Justice Maule in *Brown v. Mallett* (1). For the learned baron states that in *Brown v. Mallett* (1) the Judge says that "it is the duty of a person using a navigable river with a vessel of which he is possessed and has the control and management, to use reasonable skill and care to prevent mischief to others; and he adds, that his liability is the same, whether his vessel be in motion or stationary, floating or aground, under water or above it," and this dictum is approved. Now, in my opinion, it has been proved that the possession, management and control of the *Douglas* were not abandoned by her master and crew, and consequently that their duty continued up to the time of the collision with the *Mary Nixon*. I must therefore pronounce for the plaintiffs.

Solicitors—Gellatly, Son & Co., for plaintiffs;
W. A. Crump & Son, for defendants.

(1) 5 Com. B. Rep. 599; 17 Law J. Rep. C.P. 227.

(2) 10 Exch. Rep. 312; 23 Law J. Rep. Exch. 317.

ADMIRALTY. }

1882.

Feb. 7. }

THE MIRANDA.

Practice—Preliminary Act—Amendment.

The Court will not usually allow any amendments to be made in the Preliminary Acts.

This was a motion on behalf of the plaintiffs, the owners of the steamship *Cleanthes*, in an action against the *Miranda* for damage by collision, for leave to amend their Preliminary Act, by inserting in article 7 the course and speed of the *Cleanthes*, which had been omitted, and in article 12, after "the engines of the *Cleanthes* were put full speed," "astern," the latter word having also been omitted.

Phillimore, in support of the motion.—These are clerical errors, the words being quite inadvertently omitted. No pleadings have yet been delivered. The Preliminary Act was filed on January 21 by the London agent, and on the 2nd of February the client in the country had occasion to look at it for the first time—compared it with the draft, and then found these omissions. No further information has been discovered by the plaintiffs since the Act was filed. *The Vortigern* (1) is an authority in favour of the plaintiffs.

Myburgh, for the defendants, was not called on.

SIR R. J. PHILLIMORE.—In deciding this motion I shall adhere to the rule which I have always followed, and shall refuse to allow any alteration in the Preliminary Act. I am quite sure that the great advantage which the Court derives from the Preliminary Acts would be lessened by allowing alterations to be made in them. I therefore dismiss this motion with costs.

Solicitors—Botterell & Roche, for plaintiffs; T. Cooper & Co., for defendants.

[IN THE COURT OF APPEAL.]

ADMIRALTY.

1882.

July 4.

THE GUY MANNERING.*

Pilotage, Compulsory—Damage by Collision—Suez Canal Regulations.

By article 4 of the Regulations for the Navigation of the Suez Canal every ship above 100 tons is bound to take on board one of the company's pilots; but by the same article the responsibility for the management of the ship rests solely on the captain. A collision occurred in the canal between two steamers, the *W. H.* and *G. M.*, and was caused solely by the negligence of the pilot on board the *G. M.* In an action for damages against the *G. M.*,—Held, by the Court of Appeal (affirming the judgment of SIR R. PHILLIMORE), that the owners of the *G. M.* were not exempt from liability on the ground of compulsory pilotage.

Appeal from a judgment of the Admiralty Division (reported *Ante*, p. 17) on a Special Case, from which the following facts appeared:—

Action for damages by collision brought by the owners of the British screw steamship *Wistow Hall*, of 1,729 tons register, against the owners of the British screw steamship *Guy Mannering*, of 2,817 tons register. The collision occurred in the Suez Canal. The plaintiffs admitted that the collision was solely caused by the negligence of the pilot, who had been taken on board the *Guy Mannering* by virtue of article 4 of the Regulations for the Navigation of the Suez Canal. The defendants admitted that the collision was caused by the bad navigation of the *Guy Mannering*, and that the master and crew were their servants; but claimed to be exempt from liability on the ground that they were compelled by the law in force in the Suez Canal, to which all vessels passing through the canal are subject, to give up charge of the navigation of their ship to one of the pilots employed by the Suez Canal Company, whom they had taken on board, and on the ground that the collision was entirely occasioned by his bad navigation.

Article 4 of the Regulations for the

* *Coram* Lord Coleridge, C.J.; Brett, L.J.; and Cotton, L.J.

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Navigation of the Suez Maritime Canal is as follows:—

"Every vessel measuring more than one hundred (100) tons gross must take on board a company's pilot for the whole length of the canal, who will indicate all particulars concerning the passage through. The captain is held responsible for all groundings and accidents of whatsoever kind resulting from the management and manœuvring of his ship.

"Pilots place at the disposal of captains of vessels their experience and practical knowledge of the canal, but as they cannot be specially acquainted with the defects or peculiarities of each steamer and her machinery in stopping, steering, &c., the responsibility as regards the management of the ship devolves solely upon the captain."

Sir R. Phillimore gave judgment for the plaintiffs, holding that the defendants were liable for the bad navigation of their ship and the damages consequent thereupon.

The defendants appealed.

Butt, Q.C. (with him *Nelson*), for the defendants.—It is found in the Special Case that the pilot was *de facto* in charge of the ship, and that the collision was caused by his negligence. The captain was compelled under the various articles in force for the regulation of the navigation of the canal to take a pilot on board, and also to pay the dues, so that it is clear that for some purposes the pilotage was compulsory. Section 388 of the Merchant Shipping Act, 1854, shews that a shipowner is not liable for loss or damage occasioned by the fault or incapacity of any pilot where pilotage is compulsory; and although the application of that section is by section 330 confined to the United Kingdom, yet it embodies the general principle of law that a shipowner is not liable for the acts of a pilot whom he is obliged by compulsion of law to employ—*Lucey v. Ingram* (1) and *The General Steam Navigation Company v. The British and Colonial Steam Navigation Company* (2). Where pilotage is compulsory the

(1) 6 Mee & W. 302; 9 Law J. Rep. Exch. 196.

(2) 37 Law J. Rep. Exch. 194; in error, 38

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relation of master and servant does not exist between the shipowner and the pilot, so that the maxim *qui facit per alium facit per se* is not applicable, and consequently no liability is created in the shipowner for the acts of the pilot—*The Halley* (3). Article 4, moreover, is *ultra vires*; the company have no power under the Act of Concession to levy pilotage dues without undertaking the ordinary liabilities of compulsory pilotage. The defendants consequently are not liable.

Phillimore (with him *Cohen*, Q.C.), for the plaintiffs, referred to the Merchant Shipping Act, 1854, ss. 353 and 376; 6 Geo. 4. c. 125. s. 19, and *The Maria* (4). He was then stopped by the Court.

LORD COLERIDGE, C.J.—I am of opinion that the judgment of the Court below is correct, and for the reasons there given.

BRETT, L.J.—I am of the same opinion, and for the same reasons. Two objections have been taken, that, assuming the law to be within the power of those who passed it, yet, nevertheless, since the captain allowed the pilot to act, the owners of the ship are not liable. Another point argued was that the persons who made these articles had no authority to make them so far as they impose and compel a pilot to be taken upon a ship and to be paid for; and that any limitation of the usual authority of a pilot was *ultra vires*. No facts, however, have been stated here to raise the question whether the authorities of the country which authorised the regulations for the management of the canal had power to make the regulations. It was said that the article compulsorily imposes upon the captain of a ship the necessity of taking a pilot, and that the moment the navigation of the ship is compulsorily given up to the pilot the owner of the ship is protected from the consequences of any act of the pilot. In England there are statutes which make pilotage compulsory in particular ports of the kingdom, but none of the English statutes state what is the duty

of the pilot when so put on board; for it is too well known to require any special enactment with regard to it. The duty of an English pilot is without rule; it is to regulate and conduct the navigation of the ship so far as her course is concerned: he has no other power on board ship over the ship, her discipline, the cargo, or passengers on board.

The pilot has no power with regard to the various matters which are necessary to enable him to perform that which is his recognised duty: thus he cannot place men on the look-out, nor regulate the place where they are to be put. The pilot has power only to regulate and control the navigation of the ship. If a ship be a sailing ship, it is known that she cannot be steered unless her sails are put in a particular position, and therefore, for the purpose of steering the ship, the pilot on board an English sailing ship is the person who gives the orders. All the orders which an English pilot has to give are the orders necessary for the purpose of regulating the ship's course upon the waters. He knows the course she has to take and might take, and that is the matter given up to him.

The English law, applying certain principles to such an employment, has said that a man who is compulsorily put into a position in which he is by his employment to exercise those powers, is not a person who in the exercise of those powers is to act according to the directions of others, but is put there to exercise the powers himself, and the owners are not bound to give him orders. He is put upon the owners compulsorily for that purpose; and so far as the exercise of those known powers are concerned, if any damage arises in the course of the ship upon the waters by reason of his regulating the course of the ship, the owners are not liable. But if the course of the ship is wrong in consequence of the want of a look-out man, yet, although the pilot has given the orders, the fault is not solely the fault of the pilot, but is the fault of part of the crew, and the owner is liable. So if the man at the wheel has an order given to him to steer a course which would be the right course, but does not obey it at all, or is too late in obeying it, then although the course of the ship is wrong,

Law J. Rep. Exch. 97; Law Rep. 3 Exch. 330; in error, Law Rep. 4 Exch. 238.

(3) 37 Law J. Rep. Adm. 33; Law Rep. 2 P.C. 193, 202.

(4) 1 W. Rob. 95.

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it is not solely the fault of the pilot, and the owner is therefore liable. The compulsion which arises in English law is the obligatory payment for the services of the pilot, whether he is taken on board or not. In *The General Steam Navigation Company v. The British and Colonial Steam Navigation Company* (2), the master was bound to take a pilot at Dungeness and to pay for his services as far as Gravesend; and it was assumed for the purposes of that decision that although the pilot might cease to exercise authority, and that the captain was not bound to employ him beyond Yantlet Creek, yet if the captain was coming into the Thames from Dungeness, he was bound to take and to pay the pilot all the way to Gravesend; and it was therefore held that although Gravesend might be within the port of London, where pilotage is not compulsory, yet the obligation to pay a pilot all the way to Gravesend was a compulsion on the captain in the sense that if he allowed the pilot to act, the owner would not be liable. The case of *Lucey v. Ingram* (1) is not applicable, and was decided solely on the interpretation of 6 Geo. 4. c. 125. s. 55, which relieved the shipowner, although the pilotage was not compulsory, if the pilot was acting under the provisions of the Act, the peculiarity of which was that it did away with the necessity of compulsory pilotage.

The whole foundation of the English law is that a person who is compulsorily put upon you so that his acts cannot be regulated is not in the position of a servant; for directions cannot be given by the person upon whom he is put as to the mode and manner in which he shall manage that employment. The employment of a pilot is made compulsory by Dutch and Belgian law, and an owner, notwithstanding, is not relieved from responsibility; but it has, nevertheless, been held in the case of *The Halley* (3) that the owner of an English ship was not responsible for an accident happening through the negligence of the pilot in foreign territory, on the theory that the pilot was compulsory and that the provisions of the foreign law that the owner should be liable ought not to be applied in this country. The theory on which the English law is

founded fails in this particular case, because the duties of the pilot here are not the same as those of an English pilot. The regulation is somewhat peculiar, because the pilot does not take the control and management of the course of the ship, but is put upon the shipowner, who is bound to pay for duties other than those which an English pilot has to perform. Half of the duties of an English pilot are thrown upon the captain by article 4, the meaning of which seems to be that the pilot is to advise the captain as to the condition of the canal below the surface of the water—that is, he is to act as the captain's live chart. The responsibility as regards the management and course of the ship through the canal devolves on the captain. The whole duty, therefore, of steering the ship is on the captain, who must do it without injuring either the canal or his neighbours, and consequently the owner is liable for any defect in the steerage on the part of the captain. The captain here was in fault in that he misconstrued the powers which devolved upon him, and thought that he was in the same position as regards the company's pilot as he would have been if the pilot had been an English pilot. The owners, therefore, are liable.

COTTON, L.J.—The ground of this appeal is that as a pilot was compulsorily on board this ship at the time of the collision, the defendants, according to principles of English law, are not liable. In order to consider that question it is necessary to see on what principle, according to English law, the owners of a vessel which has been compulsorily taken in charge by a pilot are held not to be liable, and that is where a master is compelled to take a person on board who has to discharge certain duties. Now, what are the duties which have to be discharged by a pilot who has been compulsorily put on board a ship?

Under the Merchant Shipping Act, 1854, section 353, a pilot is said to offer to take charge of a ship, and in sections 362 and 388 a pilot is said to take or to be acting in charge of a ship—that is, acting, not absolutely in charge of a ship, but in those matters which, according to English custom, are the duties of a pilot, since he

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is paid, and is bound to be paid, for those duties; he is not the servant of the owners of the ship, who, consequently, are not liable for any default of his when so acting in the discharge of his duties. The pilot was here taken on board under certain rules and regulations, article 4 of which lays down the duties which he has to perform, and also states that the captain is held responsible for all groundings and accidents of whatsoever kind resulting from the management and manœuvring of his ship. These rules, therefore, distinctly declare that the services of the pilot do not include the very matters from which the accident in this case resulted. The servant of the shipowner was therefore in default. Having regard to what has been laid down as the duty of the pilot in this case, it cannot be said that the act which resulted in the accident was done by a person who was not the servant of the owner of the ship. It was also said that these rules are *ultra vires*; but I do not think that they are. Although they lay down regulations as to pilotage, yet they define the duties of a pilot. Unless it can be said that the duties of a pilot all over the world are the same, I am unable to see how these rules are *ultra vires*, and in my opinion they are not.

Appeal dismissed.

Solicitors—Pritchard & Sons, agents for Bateson, Wright & Co., Liverpool, for plaintiffs; Lowless & Co., for defendants.

[IN THE COURT OF APPEAL.]

DIVORCE.	}	WIGNEY v. WIGNEY.*
1882.		
March 15.		

Divorce—Settled Property—Power to deprive a Guilty Party of all Interest under the Settlements—22 & 23 Vict. c. 61. s. 5, and 41 Vict. c. 19. s. 3.

After a final decree for dissolution of marriage, the Court has a discretionary power, under the Matrimonial Causes Acts, 1859 and 1878, wide enough to exclude a guilty party, either partially or

* *Coram* Jessel, M.R.; Cotton, L.J.; and Lindley, L.J.

wholly, from the benefit of property settled upon the parties to the marriage.

A marriage was dissolved on the ground of the husband's adultery and cruelty. The whole of the settled property having been brought in by the wife, and there being no children of the marriage, the Court in the exercise of its discretionary power deprived the husband of all benefit under the settlement.

Provision was, however, made out of the settlement funds for debts contracted by the husband during the coverture.

Decision of Sir JAMES HANNEN affirmed.

Appeal from an order of Sir James Hannen.

Upon the petition of Mrs. Wigney, a decree for the dissolution of her marriage with Captain Wigney was granted, upon the ground of his adultery and cruelty. This decree was made absolute in January, 1881.

At the time of the marriage, which took place in 1863, Captain Wigney held a staff appointment, but had little, if any, means beyond his pay. Mrs. Wigney, who was twelve years older than her husband, had a fortune of 40,000*l.* At her instance he gave up his staff appointment, and retired from the army upon half-pay. Prior to the marriage a settlement of the wife's property was executed, by which as to 15,000*l.* the first life interest was given to the husband and the second to the wife; and as to the other 25,000*l.* the first life interest was given to the wife and the second to the husband. After the death of the husband and wife both funds were to be held upon trust for the children of the marriage, and in case there should be no child, upon trust for such person as the wife should by will appoint, and in default of appointment upon trust for the husband absolutely. There were no children of the marriage.

After the decree absolute, Mrs. Wigney applied in the Divorce Division for an order extinguishing all the interest given to the husband by the settlement. During the cohabitation Captain Wigney had borrowed 4,200*l.* on the security of his life interest under the settlement and certain policies on his life. The interest on the mortgages amounted to 210*l.* a year, and

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the annual premiums on the policies to 120*l*. The moneys thus borrowed had been expended upon a joint establishment. Mrs. Wigney's application was referred to the Registrar for investigation. He reported that the annual sums in which the husband had the first life interest amounted to 948*l*, and that the annual income of the funds in which the wife had the first life interest amounted to 1,165*l*. The Registrar submitted to the Court that it would be proper that an order should be made that the trustees of the settlement should hold the settled property, and apply the income thereof upon the trusts which would be applicable in case the husband were dead, and had died in the lifetime of the wife, and freed from the ultimate trusts in his favour.

Sir James Hannen afterwards made an order confirming the Registrar's report, subject to an undertaking on the part of the wife to pay the charges which the husband had created upon his life interest.

From this order Captain Wigney now appealed.

It now appeared that the appellant was liable for simple contract debts incurred in the joint housekeeping before the divorce. His only present income was his captain's half-pay, amounting to about 120*l*. a year.

Searle and Farwell, for the appellant.—This order is made under 22 & 23 Vict. c. 61. s. 5, extended to cases where there are no children by the Matrimonial Causes Act, 1878, section 3. But the Act gives no power to the Court to punish a guilty party. The words of the section are, the Court "may make such orders with reference to the application of the whole or a portion of the property settled either for the benefit of the children of the marriage, or of their respective parents, as to the Court shall seem fit." The intention was to give the Court power to protect either of the parties, but not (we submit) to punish. The words must be construed strictly. Yet this order is plainly in the nature of a punishment for the husband's misconduct. In *Maudesley v. Maudesley* (1) Sir James Hannen himself lays it

(1) 47 Law J. Rep. P., D. & A. 26; Law Rep. 2 P. D. 256, 261.

down that it is not the function of the Court to punish the husband.

They also cited *Fitzgerald v. Chapman* (2), *Corrance v. Corrance* (3) and *Benyon v. Benyon* (4).

Inderwick, Q.C., and *Middleton*, for Mrs. Wigney, cited *Boynston v. Boynston* (5), *Gladstone v. Gladstone* (6) and *Cooke v. Cooke* (7).

Searle replied.

JESSEL, M.R.—This appeal raises a very important point as to the power of the Court under section 5 of the Act of 1859, as amended by section 3 of the Matrimonial Causes Act, 1878. The amendment contained in the latter section is not expressed in the most artistic way, because, where there are no children of the marriage, there can be no parents to whom the former section can in terms apply. But what is meant of course is that, where there are no children, the persons to be benefited are the divorced husband and wife. That being so, it appears to me that the Act is open to two constructions: one, to read the section literally as giving to the Court an absolute discretion, being of course a judicial discretion; the other, to read the words "for the benefit of the children of the marriage or their respective parents" as enabling the Court to make a sufficient and reasonable provision for such benefit. My impression as to the meaning of the section is that it was not intended to fetter the discretion of the Court, but to leave it at large, so as to enable the Court to take into consideration all the circumstances of the case. It has been very much pressed upon the consideration of the Court that the guilt of one of the parties ought not to be taken into consideration at all. But I think it impossible to hold that it was not considered by the Legislature to be a very material circumstance by whose fault it was that

(2) 45 Law J. Rep. Chanc. 23; Law Rep. 1 Ch. D. 563.

(3) 37 Law J. Rep. P. & M. 44; Law Rep. 1 P. & D. 495.

(4) 45 Law J. Rep. P., D. & A. 93; Law Rep. 1 P. D. 447.

(5) 2 Sw. & Tr. 275.

(6) 45 Law J. Rep. P., D. & A. 82; Law Rep. 1 P. D. 442.

(7) 2 Phill. Eccl. 40.

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the marriage had come to an end—not, indeed, for the purpose of enabling the Court to inflict a penalty, but to enable it to exercise a discretion as to the proper amount of maintenance. The old practice of the House of Lords, when a divorce could only be obtained by an Act of Parliament, where the wife was not in a position of life which enabled her to earn her own living, was to make some provision for the guilty wife. It was not their practice to let her starve. But, if she were guilty, it was not the practice to make the same provision for her as if she had been innocent. The same principle applies to a husband. Supposing that a husband, though guilty, were suffering under some physical infirmity, and were incapable of earning his living, and had no means of his own, I am not sure that the Court would not make some provision for him, rather than let him be supported by entire strangers in a workhouse. Then, if the Court has, as I consider it has, a large discretion, that discretion must be exercised in the usual way. Having regard to the rules which govern appeals, where the Judge has a discretion, the appellant must shew that there has been what is called a gross miscarriage, or that the order is clearly wrong. It is not sufficient that the Court of Appeal would not have made precisely the same order as has been made in the Court of first instance. It must be shewn that the Court below has made some mistake of law, or some mistake of fact, or that the order is utterly unreasonable. Unless something of that kind is shewn the Court of Appeal will not interfere.

Having said that, I have to consider what were the facts of this case. A gentleman, a captain in the army, married a lady twelve years his senior. He had no fortune, but he held a staff appointment. She had a considerable fortune, amounting to upwards of 2,000*l.* a year. A settlement was executed, and by that settlement not quite one moiety of the income, something over 900*l.*, was given to the husband for life. In the remaining income the wife had the first life interest, amounting to some 1,100*l.*, and then, in the event of no children, subject to the wife's appointment, the whole fund was to

belong to the husband. The marriage which had been contracted in 1863, was, in 1881, dissolved by reason of the cruelty and adultery of the husband. It appears that at the time of the dissolution he was in the receipt of half-pay amounting to 120*l.* a year. He is a man in middle life, not disabled from earning a considerable addition to his income. That being so, it does not appear to me at all obligatory on the Court to make any further provision for him. What the Court of Divorce has done is to allow the mortgages which he had made of his life estate to remain a charge, amounting to nearly 400*l.* a year, on the property; but in all other respects, to destroy his interest in the settled property. Taking the second view above-mentioned of the section, which is not my view, is it unreasonable to give this lady, whom I will call a *quasi*-widow, an income of 1,600*l.* in lieu of the 2,000*l.* which she had when she was a spinster? She is losing something like 400*l.* a year. Again, can it be said that a husband, who by his conduct has destroyed the consideration for which the settlement was made, has anything to complain of if his interest under the settlement is taken away from him? In my opinion, there has been not only an exercise of judicial discretion, but a not unreasonable exercise of discretion in the case.

On the other point, as to the debts which the husband had contracted before the separation, different considerations arise. The husband alleges that he had incurred these debts amounting to 2,000*l.* for expenses connected with the joint establishment of himself and his wife, when he had reasonable expectation of being able to pay those debts out of the income of himself and his wife arising from the settled fund. When out of the fund the joint income amounted to 1,600*l.* a year, he was not extravagant in incurring debts to the amount of 2,000*l.* Now that the marriage has been dissolved, and he has not the means of paying these debts, is it right, as regards the tradespeople to whom these debts are due, that they should be deprived of payment because the marriage has been dissolved? Is it right that the wife, who during the coverture had the benefit of this expenditure, should not pay

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for it! In my view it is not right, even against creditors, nor is it right as regards the husband himself. It seems reasonable that provision should be made out of the fund for the payment of those debts which had been incurred for the benefit of the joint establishment; and as to this there must be an enquiry as to the debts which were unpaid at the time of the separation, and whether they were debts incurred in the house by the wife after the separation, so long as she remained in the house.

COTTON, L.J.—This case involves an important question on the construction of the 5th section of the Divorce Court Act of 1859, as amended by the Matrimonial Causes Act, 1878, enabling the Court to exercise the power given by section 5 of the former Act, even though there are no children of the marriage. What, then, was the power of the Court before the Act of 1878? The 5th section of the Divorce Act gave the Court power to apply the whole or a portion of the settled property, "either for the benefit of the children of the marriage, or of their respective parents, as to the Court shall seem fit." It seemed, therefore, that this provision gave to the Court power, if it thought fit, to make a provision even for the guilty party. It certainly did not enable the Court to enforce forfeiture against the guilty party, or to punish the guilty party; but it enabled the Court to make provision for either party, even if guilty. The words are "either for the benefit of the children of the marriage or of their respective parents." Under these words I am clearly of opinion that a provision might be made for either of the spouses. But it is equally clear that the Court has the power, and has the duty, to take into consideration the circumstances of the case, amongst which the conduct of the parties is clearly one. Which of the two was the guilty party is a consideration not to be left out of the question. The power is a discretionary power, and the question is: Has the Court of Divorce in this instance exercised its power wrongly? I think I should not myself have made exactly the order which the Court has made. But that is not the question for a Court of Appeal. The

question is whether the discretion has been exercised so wrongly as that the Court of Appeal ought to interfere. Having regard to the position which this lady occupied, and the amount of her income, considering that that income would be reduced by charges upon the settled property, and by charges in respect of expenses incurred on account of the household whilst the parties lived together, and looking at the discretionary power given by the section, I cannot say that here there has been an unreasonable exercise of judicial discretion. One word as to the cases which have been referred to. In *Boynston v. Boynston* (5), which was a decision by the full Court, the Court took away the whole of the husband's interest under the settlement, and directed it to be applied in favour of the mother and child. At the same time the Court laid down no fixed rule by that decision, and upon the occurrence of similar circumstances I would follow that decision, though I might myself differ from it. In the other case, of *Gladstone v. Gladstone* (6), not more than 200*l.* a year was brought by the husband into settlement, and the Court took the whole of that away from the husband, and gave it to the wife. No one can say that that was an unreasonable provision.

LINDLEY, L.J.—I am also of opinion that the appeal ought to be dismissed, except so far as the order is to be modified by the enquiry. The important question is, whether the Court has gone too far in striking out of the settlement the clauses beneficial to the husband. As to that, no doubt there is a difficulty in construing the Divorce Act of 1859; but, having regard to the language of the second Act, which certainly is not very well adapted to the subject-matter, the combined effect of the two statutes seems to be to give the Judge of the Divorce Court a discretion how he should apply the whole or a portion of the property settled, in case of there being no children, for the benefit of the husband and wife, or one of them. At the same time the Judge undoubtedly has a discretion given to him, and I would decline to review an exercise of the Judge's discretion, unless it seems to have been exercised unreasonably. In this instance I feel bound

Wigney v. Wigney (App.), Dir.

to say that I think the exercise of discretion has not been unreasonable. Suppose the husband were about to marry the lady with whom the adultery had been committed, it would be a strange thing to hold that the petitioning wife should be made to contribute in order to enable him to do so. As it is, the husband still has the advantage of having the burden of his mortgage debts thrown upon the settled fund. As to the debts contracted during the coverture, the attention of the President does not seem to have been directed to this point, and as to this all the members of the Court agree in thinking that there should be an enquiry. There will be no costs of the appeal.

Solicitors—Stokes, Saunders & Stokes, for appellant; Ayrtton & Biscoe, for respondent.

ADMIRALTY.

1882.

April 3.

May 15.

THE GOLDEN SEA.

Wreck Commissioner—Board of Trade Enquiry—Right of Appeal by Owner—42 & 43 Vict. c. 72. s. 2.

No right of appeal is given by 42 & 43 Vict. c. 72. s. 2, to the owner of a ship from the decision of the Wreck Commissioner upon an investigation into a shipping casualty.

These were two appeals against the decision of the Wreck Commissioner after an investigation, held at Plymouth, whereby he suspended the certificate of the master of the *Golden Sea* for three months, and exercised the discretion given to him by rule 21 of the Rules for Investigations into Shipping Casualties, 1878, by ordering the owner to pay 100*l.* costs, *nomine expensarum*. The owner was not originally a party to the proceedings, but received notice of the investigation by an informal letter from the Board of Trade. At the hearing he appeared under rules 7 and 8 of the above rules as a party interested.

Phillimore appeared for R. G. Guy, the owner of the *Golden Sea*;

Cottingham, for F. Bowles, the master; *Norris, Q.C.*, and *Danckwerts*, for the Board of Trade, who took the preliminary objection that the owner had no right of appeal, and should not be heard. First, by 42 & 43 Vict. c. 72. s. 2. sub-s. 1, an appeal lies only in respect of the cancelling or suspension of the certificate of the master, mate or engineer, and only these persons have the right to appeal. If the owner had not chosen to be a party the Wreck Commissioner could have made no order against him. Secondly, this is an appeal against costs only, and it is the universal practice of our Courts not to allow appeals on questions of costs only.

Phillimore, contra.—The owner is not excluded by 42 & 43 Vict. c. 72. s. 2. The owner was a party, and the section does not expressly limit the right of appeal to a person whose certificate has been dealt with by the Wreck Commissioner. The rules are incorporated with the Acts regulating this matter by 39 & 40 Vict. c. 80. s. 30, and rule 6 of the Rules of 1880 implies that any party interested in the Wreck Commissioner's decision may appeal. As to the second point, the order to pay 100*l.* is in the nature of a penalty, for costs are not taxed, and this payment is a mere punishment. Moreover, an appeal may be brought as to costs, unless it is expressly taken away. Further, the owner appeals against the whole decision, as is shewn by his grounds of appeal being almost similar to those of the master.

Norris, in reply.

SIR JAMES HANNEN.—As there must be an enquiry into the facts of this case, since the master is also an appellant, we will go into them now, and reserve our judgment on the preliminary question, which is one of much importance.

SIR JAMES HANNEN (on May 15) delivered the judgment of himself and Sir R. J. Phillimore, and after upholding the judgment of the learned Wreck Commissioner in regard to the facts of the case so far as the master was concerned, proceeded to give the decision of the Court

The Golden Sea, Adm.

on the question of law as to the right of appeal of the owner, as follows:—

With regard to the owner, the case is very different. It has been our duty in the interest of the master carefully to investigate all the facts, and we feel bound to say that so far as the case has been presented to us we do not see any reason to impute blame to the owner; but an objection has been taken on behalf of the Board of Trade that no appeal lies from the decision of the Wreck Commissioner condemning the owner. We feel constrained, though with great regret, to give effect to this objection. The appeal to this division is given by 42 & 43 Vict. c. 72. By the 2nd section it is enacted—first, that where an investigation into the conduct of a master, mate or engineer, or into a shipping casualty, has been held, the Board of Trade may in any case, and shall in certain cases, order that the case be reheard. Secondly, “Where in any such investigation a decision has been given with respect to the cancelling or suspension of the certificate of a master, mate or engineer, and an application for a rehearing has been made or has been refused, an appeal shall lie from the decision” to this Court. We are of opinion that the clear meaning of these words is that the decision from which an appeal is allowed is the decision with respect to the cancelling or suspension of the certificate, and not any other decision. If the reason of the enactment is considered it confirms the view we take of the construction of the section. The decision of the Wreck Commissioner may deprive the master of the means of earning his livelihood; it was thought fit therefore to give the master a right of appeal.

If it had been intended to give the owner a right of appeal we cannot conceive any reason why that should be made to depend on whether the master's certificate had been dealt with, for the injury inflicted on the owner by an erroneous decision against him is the same whether the master is found to blame or not. It is possible that an appeal was not given to the owner, because the Wreck Commissioner has only power to express an opinion on his conduct, and has not directly the power of punishing him. But it is evident that the reflection on the character of

the owner arising from an adverse finding against him is of a very serious nature. He has, in fact, though not in form, been found guilty of a misdemeanour in sending his ship to sea in such an unseaworthy state that lives were likely to be thereby endangered. In addition to this he has in effect been subjected to a fine, *nomine expensarum*, of 100*l.* We think that an amendment of the law is called for, and that the right of appeal should be extended to the owner. Entertaining the opinion which we have expressed, we are compelled to reject the owner's appeal, but we do so without costs.

Solicitors — Fielder & Sumner, agents for Osborne, Ward & Co., Bristol, for the master and owner; W. Murton, for the Board of Trade.

ADMIRALTY.

1882.

April 28.

May 2.

THE RONA.

Jurisdiction — Admiralty — County Courts and City of London Court—32 & 33 Vict. c. 51. s. 2—Damage to Cargo—Shipowner Domiciled in England or Wales.

The County Courts and the City of London Court have jurisdiction under the County Courts (Admiralty Jurisdiction) Amendment Act, 1869, over a claim for damage to goods shipped on a vessel of which the owner is domiciled in England. Such a claim is one arising out of an agreement made in relation to the carriage of goods in a ship.

This was an appeal from the City of London Court.

Bucknill argued for the appellants.

Myburgh, Q.C. (with him *W. R. Kennedy*), for the respondents.

The arguments and questions which arose on this appeal are fully stated in the judgment of the Court.

K

The Rona, Adm.

SIR R. J. PHILLIMORE.—This is an appeal from a decision of the Judge of the City of London Court in an action for damage to cargo. The action was an action *in rem* brought in that Court by the holders of a bill of lading against the owners of the ship *Rona*, for damage to goods on board the *Rona*, alleged to have been caused by the negligence of the master, during a voyage from New York to this country.

At the trial it was contended by the defendants that the action was brought under the Admiralty Court Act, 1861, and the County Courts (Admiralty Jurisdiction) Act, 1868, and that, therefore, as the owners of the *Rona* were domiciled in England, the City of London Court had no jurisdiction. The learned Judge, who considered himself bound by the judgment in *Allen v. Garbutt* (1), dismissed the action for want of jurisdiction, and the plaintiffs have appealed to this Court.

It has been admitted, at least for the purposes of the appeal, that the owners of the *Rona* are domiciled in England, and that the jurisdiction of the City of London Court is the only question now to be decided.

This question mainly depends upon the construction to be put on the following sections in three several Acts of Parliament. It is enacted by the Admiralty Court Act, 1861 (24 Vict. c. 10), section 6, that "The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of, the owner, master or crew of the ship, unless it is shewn to the satisfaction of the Court that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales."

The 3rd section of the County Courts (Admiralty Jurisdiction) Act, 1868 (31 & 32 Vict. c. 71), provides that "Any County Court having Admiralty jurisdiction, shall have jurisdiction, and all powers and authorities relating thereto, to try and de-

termine, subject and according to the provisions of this Act, the following causes (in this Act referred to as Admiralty causes)." The 3rd sub-section is as follows:—"As to any claim for damage to cargo, or damage by collision—any cause in which the amount claimed does not exceed three hundred pounds." Lastly, there is the County Courts (Admiralty Jurisdiction) Amendment Act, 1869 (32 & 33 Vict. c. 51), the full title of which, it is important to observe, is "An Act to amend the County Courts (Admiralty Jurisdiction) Act, 1868, and to give jurisdiction in certain maritime cases."

The 2nd section of this Act of 1869 provides that, "Any County Court appointed, or to be appointed to have Admiralty jurisdiction, shall have jurisdiction, and all powers and authorities relating thereto, to try and determine the following causes:—

"1. As to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship, and also as to any claim in *tort* in respect of goods carried in any ship, provided the amount claimed does not exceed three hundred pounds."

The 3rd section provides that the jurisdiction conferred by the two Acts of 1868 and 1869 may be exercised either by proceedings *in rem* or *in personam*.

The appellants, who were plaintiffs in the Court below, contend that their action was brought under sub-section 1 of section 2 of the Act of 1869, and that, therefore, it came within the Admiralty jurisdiction of a County Court, notwithstanding that, in consequence of the exception in section 6 of the Admiralty Court Act, 1861 (which I have already read), it would not have come within the jurisdiction of the High Court of Admiralty, unless brought thither by way of transfer or by way of appeal.

I have been referred by counsel to several cases, which I have carefully examined, and which I think it expedient to mention in chronological order—*Everard v. Kendall* (2), *The Douse* (3), *Simpson v. Blues*

(2) 39 Law J. Rep. C.P. 234; Law Rep. 8 C.P. 428.

(1) 50 Law J. Rep. Q.B. 141; Law Rep. 6 Q.B. D. 165.

(3) 39 Law J. Rep. Adm. 46; Law Rep. 3 Adm. 185.

The Rona, Adm.

(4), *Cargo ex Argos* (5), *The Alina* (6) and *Allen v. Garbutt* (1).

The appellants supported their contention by citing the *Cargo ex Argos* (5), a case which, like the present, arose on a bill of lading, and is so far directly in point; and *The Alina* (6), which was decided in 1880 by the Court of Appeal, and expressly approved the *Cargo ex Argos* (5).

On the other hand, the respondents (defendants in the Court below) contend that the action was brought not under the Act of 1869, but under the 3rd section of the Act of 1868, which section expressly mentions claim for damage to cargo; and they argue that, therefore, as the High Court of Admiralty could have had no jurisdiction in such a case (inasmuch as the owners' domicile was English), so neither can a County Court have jurisdiction. They rely upon the authority of *Allen v. Garbutt* (1), which, following the earlier cases of *Everard v. Kendall* (2) and *The Douce* (3), decided that an action for necessities which had clearly been brought under the Act of 1868, where the owners of the ship were domiciled in England, did not come within the Admiralty jurisdiction of a County Court.

It was alleged on both sides that these decisions—*The Alina* (6) and *Allen v. Garbutt* (1)—are distinguishable from each other, and do not necessarily conflict; the former dealing with an action under the Act of 1869, the latter with one under the Act of 1868. It is not necessary to determine whether these cases are reconcilable or not, because, in fact, the issue is narrowed to this point—Was the action against the *Rona* brought under the Act of 1868 alone, or under that of 1869 read and interpreted as one with the previous Act? It appears to me to follow, from the arguments of the respondents, that the action could not properly have been brought under the Act of 1868, and I am of opinion that this is "a claim arising out of an agreement made in relation to the carriage of goods in a

ship"; and that the action really falls within the words of the 1st sub-section of the 2nd section of the Act of 1869.

I hold, therefore, that the City of London Court has jurisdiction, and that the appeal must be allowed.

Solicitors—Pritchard & Sons, for appellants;
Toller & Sons, agents for Stone, Fletcher & Hull, Liverpool, for respondents.

[IN THE COURT OF APPEAL.]

ADMIRALTY.

1882.

May 11, 12, 26. } THE GAETANO È MARIA.*

Bottomry Bond—Goods on board Foreign Ship—Communication—Maritime Law and Law of the Flag.

The master of a foreign ship has power to bind the owner of cargo put on board his ship, by his bottomry bond, provided that it has been duly executed according to the law of the ship's flag. The rule of law, that the cargo is not bound by a bottomry bond executed by the master without previous communication with the cargo-owners, will not be enforced where it is shewn that, by the law of the ship's flag, non-communication does not invalidate the bond.

Judgment of SIR R. PHILLIMORE reversed.

Appeal from the Admiralty Division, reported *Ante*, p. 7.

The action was brought by McAndrew & Co., who were the lawful holders of a bottomry bond on the cargo and freight of the Italian ship *Gaetano è Maria*. The bottomry bond was entered into at the island of Fayal in the Azores by the master, who was also a part owner of the vessel.

By the 6th paragraph of the statement of defence, the owners of the cargo pleaded that the master was aware, at the time of his arrival at Fayal, that the cargo was shipped by a certain firm in New York, and that the ship was chartered for the voyage by a firm in London, and that the

* *Coram* Lord Coleridge, C.J.; Brett, L.J. and Cotton, L.J.

(4) 41 Law J. Rep. C.P. 121; Law Rep. 7 C.P. 290.

(5) 41 Law J. Rep. Adm. 89; Law Rep. 3 Adm. 568; 42 Law J. Rep. Adm. 1; Law Rep. 5 P.C. 134.

(6) 49 Law J. Rep. Adm. 40; Law Rep. 5 P.D. 138.

The Gaetano e Maria (App.), Adm.

master did not communicate with the owners of the cargo, or with the charterers of the ship, as he should and could have done, and that the bond was consequently invalid.

The plaintiffs, after denying the possibility of communication, by the 4th paragraph of their reply, averred that, "by the law of Italy, to which country the *Gaetano e Maria* belonged at the time that the bottomry bond in question was executed, and at the time when it became due, the bottomry contract had to be entered into, and the said bottomry bond had to be executed, as they in fact were, in the presence and with the intervention and sanction of the Italian consul or consular agent at the port of Fayal, and that upon their being so entered into and executed, they became and were valid and effectual to bind both ship and cargo, without any previous communication being made by the master to the owners of the ship or cargo." By the 5th paragraph of the reply, the plaintiffs also pleaded in the alternative that, by the law of Italy, a valid bottomry bond can be executed without any previous communication with the owners of the ship or cargo.

To these paragraphs the defendants demurred.

Sir R. Phillimore gave judgment on the demurrers for the defendants.

The plaintiffs appealed.

C. Hall, Q.C., and *W. G. F. Phillimore*, for the plaintiffs.—Although the Court below held that *The Hamburg* (1) governed this case, yet there the law of the flag was not considered at all. The question whether non-communication with the owners of cargo, if not required by the law of the flag, would render a bottomry bond invalid, has not hitherto been decided. This is not a question of the construction of a contract, but simply one of agency—of the authority of the master to bind the owner of cargo. In *Lloyd v. Guibert* (2) the cargo was shipped under a contract of affreightment, whereas there is no contract here, but merely a question of necessity;

but there is no distinction between a contract of affreightment and a bottomry bond. *Lloyd v. Guibert* (2) practically overrules *The Hamburg* (1). The authority of the master must be decided by the law of the flag—that is, by the law of his own country.—*The Karnak* (3), *The Eliza Cornish* (4) and *Kleinwort v. Cassa Maritima of Genoa* (5).

Butt, Q.C., and *Myburgh, Q.C.*, for the defendants.—The Court is asked to apply foreign law to a decision on a question arising out of a suit on a bottomry bond. It is laid down in *Maunder and Pollock on Shipping* (6), that the Court of Admiralty will not deal with a bond as a bottomry bond, merely because it was held to amount to an instrument of hypothecation in the country in which it was given; and in no instance has a bottomry instrument been held valid by a Court of this country except where the requirements of the law of the tribunal have been complied with. The question here is, whether the signature of the captain to the bottomry bond binds the defendants. It is contended that by the law of England there is no contract. The action is against the owner of cargo, who is only bound where he signs the bond himself, or where some person, who has become his agent by necessity, has signed it. If the owner of cargo is on the spot, or in such a position near at hand that the master has reasonable means of communicating with him, there the master has no authority, and is not the agent, *ex necessitate*, of the owner of the cargo, to sign the bond. The question as to a contract of affreightment does not arise here. It is admitted by the plaintiffs that the defendants would not be liable according to English law; but it is contended that, under the circumstances of this case, the bond, although invalid by English law, would be binding on the defendants by Italian law. The mere act of putting cargo on board ship does not authorise a hypothecation of the cargo. The Italian law, if it is to prevail, would authorise the making of a contract; whereas the master can only sign a bottomry

(3) 38 Law J. Rep. Adm. 57; Law Rep. 2 P.C. 565.

(4) 1 Spink. 36.

(5) Law Rep. 2 App. Cas. 156.

(6) Vol. i. pp. 569-570 (4th ed.).

(1) Br. & L. 295; 2 Moo. P.C. N.S. 289; 33 Law J. Rep. P., M. & A. 116.

(2) 35 Law J. Rep. Q.B. 74; Law Rep. 1 Q.B. 115, 125.

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bond as agent for the owner of cargo by the necessity of the case, and by that alone. The authority of the master is derived from the presumption that the owners have no means of expressing their wishes. When such means exist and communication can be made with the owners, and they can give their orders, the character of agent is not imposed upon the master, because the necessity which creates it does not arise—*The Hamburg* (1). It is well-established law that the word "necessity" by English law involves two propositions: absence of owner of cargo from the spot—absence of reasonable possibility of communicating with the owner—and impossibility of otherwise raising money. There is no authority for the proposition that foreign law can constitute a foreign person the agent for an English person, who resides in London, without his consent, so as to bind him in England. It has never been held that necessity will compel a captain, as agent for the cargo-owner, to hypothecate cargo in the face of an express prohibition to do so.

[LORD COLERIDGE, C.J.—In *The Grati-tudine* (7) it is stated that the master, where the security of the ship is not sufficient, and he is not able to raise money on that alone, need not in all cases wait till he hears from a distant country. But that where the repairs may be immediately necessary, and where the owners of cargo may be very numerous, the necessity of such a case authorises the captain to do one of two things—to sell a part of the cargo, for the purpose of applying the proceeds to the prosecution of the voyage by the repair of the ship; or to hypothecate the whole, for the same purpose.]

Supposing that, instead of a case of bottomry, it was one of general average where goods had been jettisoned. There the law of England would prevail, because it is the custom to regulate the costs of repairs according to the law at the port of discharge.

The first question here is whether there is any contract between the parties; that is a matter of evidence which must be governed by the *lex fori*, and is one of the distinctions pointed out by Willes, J., in

(7) 3 Ch. Rob. 240, 262.

Lloyd v. Guibert (2) as being the difference between a bottomry bond and a contract of affreightment. The signature must first be proved, and then the authority by which that signature was attached to the instrument. Where a contract is made in one country to be performed in another there the *lex loci solutionis* must be applied—*Byles on Bills* (8). The bottomry bond here was made payable in London, and must therefore be governed by the law of the land where it is made payable. The law of England has been applied in a long series of similar cases, and *Lloyd v. Guibert* (2) is not an authority to the contrary.

The Halley (9) and *Story on Conflict of Laws*, s. 242, were also referred to.

Phillimore, in reply.—The power to hypothecate the cargo arises in the first place out of the contract of bailment—that is, when the goods are delivered to the carrier—*Nugent v. Smith* (10); and the case must be governed by the law of the ship's flag.

Cur. adv. vult.

The following judgments were delivered on May 26:—

BRETT, L.J.—The facts in this case, which arise upon demurrer, must be taken to be as follows: The defendants who, whether British subjects or not, are domiciled in England, shipped goods abroad on board an Italian ship, in fulfilment of a contract which was actually made in England, to be carried to England. The ship met with a misfortune during the voyage and was obliged to put in at Fayal, where the master entered into a bottomry bond, hypothecating the ship and cargo. Both the ship and cargo afterwards arrived in England, and were there seized in the Admiralty Court. Upon these facts it was asserted that there were means of communication between Fayal and England, so that the master might have communicated with the owners of the cargo before hypothecating it, and that is not denied. It was also stated in the pleadings that the captain was entitled under

(8) 13th ed. p. 402.

(9) 37 Law J. Rep. Adm. 33; Law Rep. 2 P.C. 193.

(10) 45 Law J. Rep. C.P. 697; Law Rep. 1 C.P. D. 19, 23, 241.

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the circumstances by Italian law to cover the cargo if he did so before the Italian consul, and it was stated in another paragraph of the pleadings that although means of communication with the cargo-owners existed, yet by Italian law the master may cover the cargo without communicating with them. This demurrer, therefore, raises the question whether the goods of the defendants are bound in an English Court of Admiralty by a bottomry bond so entered into by the master, although there are means of communication with the cargo-owners before the bond is entered into. The first question is, What is the law which is administered in the English Court of Admiralty; and whether it is English law, or what is called common maritime law—that is, the law of all maritime nations. There is no doubt as to that question. The English Court of Admiralty is authorised to act according to English law, and the law administered in that Court is English maritime law. The law administered in another country is the law of that particular country. With regard to many propositions the maritime law is the same, and in that sense is common maritime law. But the law administered in the Admiralty Court in England is not the ordinary municipal law, but is the law which that Court, either by Act of Parliament or by reiterated decisions of principles, has adopted as the English maritime law. There is no doubt as to that, and it is what has been promulgated in the Admiralty Court ever since the time of Lord Stowell and Dr. Lushington. The present case must therefore be decided according to the English maritime law, and must depend upon the decisions and authorities which are binding upon the English Court of Admiralty. If the ship had been an English ship, and the captain an English master, and if the cargo-owners had been English subjects, there is no doubt that the master would have had no authority to bind the cargo-owners by his bottomry bond, unless certain necessities had arisen. There are many such necessities. The ship must be in a port of distress; the shipowner must have no money with which to do the repairs, and no credit which would enable him to obtain money by

means of which the repairs could be done; and the value of the ship must have been insufficient. There is, however, more than this, although there are other necessities. Thus the master is not authorised to charge the cargo, if, before doing so, he has the means of communicating with the cargo-owners within a reasonable time, so that they may determine whether or not they will allow the cargo to be hypothecated. If the ship had been an English ship the cargo-owners would not have been liable, because it is admitted that the master might have communicated with them. It was alleged that this rule must bind the plaintiffs, although the ship is an Italian ship, because, it was said, the matter to be proved was whether there was a necessity which gave the captain a right to hypothecate or bind the cargo in this way, and that inasmuch as it was a matter of evidence, it was therefore a matter of procedure and within the rule that it must be governed by the law of the forum. It was said that this is so because it is matter of evidence. The manner of proving facts is a matter of evidence and of procedure; the facts to be proved here are not matters of procedure, but are matters with which procedure has to deal. The question therefore here is not one of procedure which is to be governed by the law of the forum. Now what is the nature of that which has to be proved? It is a matter of the authority of the master. That authority is not a contract. There is no contract between the master and the cargo-owner which enables the master to deal with the cargo. There is a contract between the shipowner and the cargo-owner, but it is not necessary to decide whether the master is the agent of the cargo-owner; he is the agent of the shipowner, and it may be that as such he has a right in certain circumstances to act for the cargo-owner. If that be so, out of what does that right or authority of the master arise? The authority of the master to hypothecate the ship or cargo does not arise out of the contract of bailment—such a contract gives no such right—nor does it arise out of the contract for the carriage of goods on land. I doubt whether it would arise on a sea voyage from port to port, where the carriage of the goods is to be conducted

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wholly within the three miles limit. It is, however, unnecessary to decide that question. But the right does arise where goods are shipped on board ship to be carried from one country to another. That is a proposition which has been acknowledged by the maritime law of England and in every maritime country, and arises from the necessity of things. The principal obligation of the shipowner and master is to carry goods from one country to another. It is also inevitable that the ship may be in a strange port where the master is without means, and the shipowner without credit, because he is not known there, and that there must be a power given to the master, under certain circumstances, to hypothecate by his bottomry bond. That power does not arise out of the bill of lading or charter-party, because it may exist where there is neither. But it does arise out of the maritime contract to carry cargo, and it arises the moment the goods are put on board ship for the purpose of being carried from one country to another. That contract of shipment stands alone, but is often limited by the terms of the bill of lading or charter-party. But unless the terms of the bill of lading or charter-party specifically do away with this authority of the master, the shipment of goods gives authority to the master to act under certain circumstances in respect of the cargo. It is not, however, necessary to decide whether the authority is given to the master by way of contract or by law. The authority is one which arises out of a contract, but which is not the subject-matter of a contract; it is no term of a contract, but arises in consequence of a contract having been entered into.

Now what is the principle which ought to govern the present case? The goods are put on board an Italian ship; the person who is to exercise the authority is an Italian master. What authority ought to be inferred as the one which has been given to him? Ought it to depend upon the law of the shipper of goods when that is contrary to the law of the master's country? Is the master of a ship to be taken to know the law of the country of each person who puts goods on board his ship? It would be strange if it were so. If a man puts goods in the power of an

Italian master, it is surely his intention that the master should deal with the goods as an Italian master would deal with goods put on board an Italian ship. On principle, therefore, a man who ships goods on board a ship, intends that those goods should be dealt with according to the law of the country to which the ship belongs, unless there is a stipulation to the contrary contained in the bill of lading or charter-party. Therefore, when these goods were shipped on board an Italian ship, it seems to me that, by the conduct of the parties arising out of that shipment, the goods were to be dealt with, under circumstances which might arise and which it is admitted did arise, in the way in which the master would under the law of Italy deal with those goods, unless there was a stipulation to the contrary. That is the principle to be applied. Now, how do the authorities stand?

It does not seem to me that *Lloyd v. Guibert* (2) absolutely governs this case, because the question there was whether or not a certain stipulation should be implied into a contract of affreightment—namely, that if certain circumstances arose and the master delivered up both ship and freight, the shipowner could not be made liable beyond that amount. The master and owner of the ship could only be relieved if such a stipulation could be implied. There could be no such stipulation if the case was to be decided according to English law, but there could be if it was to be decided according to the law of the ship. The contract, since it was made with the owner of a foreign ship abroad, was a contract of the country of the ship, and would have contained that stipulation—in other words, the contract was a foreign contract and was to be construed according to foreign law, that is, was to be governed by the law of the ship's flag. *Lloyd v. Guibert* (2) does not, therefore, govern this case, because the matter here is not one of construction of a contract, but as to the authority which arises out of the fact that a contract of shipment has been entered into. Although the case does not, yet the principle there laid down does govern the present case. The contract there was a foreign contract, and as the ship was a foreign ship, was construed

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according to foreign law. The principle laid down in that case authorises us to say that the authority given to the master, which arises out of the contract of shipment, is an authority given by the law of the country of the ship. This case ought, therefore, to be decided in accordance with the principle laid down in *Lloyd v. Guibert* (2). Sir Robert Phillimore, in the Court below, thought that *The Hamburg* (1) governed the present case. But I think that it does not govern this case at all; for Dr. Lushington there treated the ship as an English ship, and, while administering the maritime law of England, expressed an opinion that he did not know what his decision would have been if there had been any evidence that the maritime law of some other country was different; but there was no such evidence, so that the point did not arise in that case. The Privy Council agreed with that decision, and, therefore, in neither Court was it decided which law would have been administered if there had been a conflict of law. I do not, therefore, think that *The Hamburg* (1) is in conflict either with the decision to which I have come or with *Lloyd v. Guibert* (2). Acting upon the principle laid down in *Lloyd v. Guibert* (2), and also upon the principle which seems to me to arise from the mercantile contract itself, I think that whosoever puts goods on board a foreign ship, puts them on board subject to be dealt with according to the law of the ship's flag, unless the authority of the master is limited by any stipulation in the bill of lading or charter-party.

A minor point which was raised was that the contract of affreightment was made in England; but it was pointed out in *Lloyd v. Guibert* (2) that that fact made no difference, seeing that this authority of the master arises out of a larger contract entered into between the parties, and is not controlled by any particular stipulation. I am, therefore, of opinion that this demurrer ought not to be allowed, and that the rights of the parties ought to be decided according to the law of the ship's flag. This appeal must, therefore, be allowed.

COTTON, L.J.—There is no doubt but

that, according to English law, notice ought to have been given to the cargo-owners by the master before he executed the bottomry bond; but there is a statement in the pleadings upon which the demurrer arises that according to the law of Italy such notice is not necessary in order to make the bond valid. The question, therefore, is whether English or Italian law is to decide the validity of the bond. The question turns upon the implied authority which arises out of the contract between the owner of goods and the owner of a ship when goods are put on board for the purpose of being carried. This must be governed by the ordinary law applicable to a contract in which there are implied terms. It was said that necessity is one of the conditions for the exercise of the implied authority given to the master; but I think that it is an implied authority arising out of the contract of shipment, although necessity is a condition for the exercise of that authority. Now, what law must govern this case? I am of opinion that the correct rule has been stated by Lord Justice Brett, that the owner of goods who puts them on board a foreign vessel must be taken, in the absence of any stipulation to the contrary, to authorise the owner of the vessel, and his agent, the captain, to deal with the goods as the captain by the law of the country to which the ship belongs is bound to do. That is a reasonable rule, because no person who ships goods can be ignorant of the flag of the country to which the ship belongs, and a captain would be placed in a very difficult position if, where necessity arises, he has to deal in a different way with different portions of the cargo. That is the rule to be adopted in the absence of any authority. Although there is no express authority, yet the principles laid down in *Lloyd v. Guibert* (2) lead to the conclusion at which Lord Justice Brett and I have arrived. The reasons given by Dr. Lushington in *The Hamburg* (1), which was followed by Sir R. Phillimore in the Court below, shew that he did not consider that he was deciding the question whether the law of the ship's country ought to prevail or not. This appeal must, therefore, be allowed.

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The Lord Chief Justice desires us to say that he agrees with the view which we have taken.

Appeal allowed.

Solicitors—Lowless & Co., for plaintiffs; Cooper & Co., for defendants.

The defendants took out a summons for particulars of the defective condition of the *Rory*. The Registrar made an order accordingly, but Sir R. Phillimore rescinded that order, giving leave to the defendants to appeal.

The defendants appealed.

Cohen, Q.C., and Gainsford Bruce, for the appellants.

Butt, Q.C., and A. Gray, for the plaintiffs, cited The Freedom (1).

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
1882. }
April 4. }

THE RORY.*

Practice—Particulars—Alleged Defective Condition of Ship—Damage to Cargo.

In an action by the owners of cargo against the shipowners, for damage to the cargo, caused by the alleged defective condition of the ship,—Held, that the defendants were entitled to particulars of the alleged defective condition of their ship.

The rule as to ordering particulars is the same in the Admiralty Division as in the Queen's Bench Division of the High Court.

Appeal from the judgment of Sir R. Phillimore. The case is reported *Ante*, p. 22.

Action by owners of cargo against shipowners for damages for injury to the cargo.

The claim alleged that the plaintiffs were merchants, and that the defendants were owners of the *Rory*, that the defendants undertook to carry a cargo of peas from Montreal to London; that the plaintiffs were consignees of that cargo, that the cargo arrived in a damaged condition, that the damage was not caused by any of the perils excepted in the bill of lading, and that the "damage and deterioration were, amongst other causes, occasioned by the defective condition of the said vessel, by reason that the said vessel was not reasonably fit to carry the said cargo on the said voyage, or by the negligence or breach of duty or contract on the part of the defendant, their servants or agents."

* *Coram* Lord Coleridge, C.J.; Brett, L.J.; and Holker, L.J.

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LORD COLERIDGE, C.J.—I am of opinion that this appeal must be allowed. The action is brought in the Admiralty Division by indorsees of bills of lading, for damages for the delivery in an injured condition of a cargo shipped on the steamship of the defendants. The claim alleges that the damage was caused by reason of the vessel not being fit to carry the cargo, or by the negligence of the defendants. I am of opinion that a general allegation such as this may be allowed, in order to avoid prolixity; but then, in order that a defendant may not be taken by surprise, such a general statement should be supplemented by particulars. If the defendants desire it, I think the plaintiffs should say on what defects in the vessel they rely as making it unfit for carrying such a cargo as this. If this is but an inference, let it be so expressed; but the plaintiffs are bound to communicate what they know, and if, before the trial, they obtain other knowledge of any matter occasioning the damage on which they intend to rely, they should then amend their particulars. I do not think the principles laid down by Sir R. Phillimore in *The Freedom* (1) conflict with this. He there says that if during a trial it should appear that either party relied on any act of which he had knowledge, but which took the other party by surprise, the Judge would adjourn the trial, in order to allow evidence in contradiction to be given. I do not think, however proper that might be in the Admiralty Division, such a course would be pursued with advantage in the Queen's Bench Division, and in this case I think the particulars should be given.

(1) 38 Law J. Rep. Adm. 25; Law Rep. Adm. & Eccl. 346.

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BRETT, L.J.—It would be strange if a different rule as to particulars should prevail in the Admiralty Division from that which holds in the Queen's Bench Division. This is really a common law action, and is only brought in the Admiralty Division because there the plaintiffs can enforce their claim against the ship. The rule on which particulars are ordered is common to all Courts. A general allegation is allowed, so as to avoid minute statements in pleading; but then the party so pleading is bound to give particulars, so that the opposite party may not be taken by surprise.

Now, in this case do the plaintiffs mean by their pleading that there was a defect in the construction of the ship, or that there was not a proper crew, or that the master was drunk, or that he did not put the hatches on when rough weather arose? If the plaintiffs were to state in their particulars that they rely on one only of these matters, then the defendants would know what they have to meet, and need not be prepared to meet the other allegations. The procedure in this respect should not differ in the Admiralty Division from the procedure in the Queen's Bench Division. I do not think *The Freedom* (1) lays down any general principle which can be adopted on this point, for if a trial is to be postponed when a party is surprised, this case might have to be postponed while a commission were sent to the other side of the globe.

HOLKER, L.J.—I am of the same opinion.
Appeal allowed.

Solicitors—Cooper & Co., for plaintiffs; Neal, for defendants.

[IN THE COURT OF APPEAL.]

DIVORCE.

JESSEL, M.R.

LINDLEY, L.J.

BOWEN, L.J.

1882.

June 6.

MEDLEY v. MEDLEY.

Alimony—Gross or Annual Sum to be secured to Wife by Husband—Order for Weekly or Monthly Payments—Alternative Order—Divorce Act, 1857 (20 & 21 Vict. c. 85), s. 32—Amendment Act, 1866 (29 Vict. c. 32), s. 1.

The direction in section 32 of the Divorce Act, 1857, to secure a gross or annual sum to the wife does not authorise an order for payment direct to the wife, but means that the sum is to be secured in such a way as to provide for the wife.

Where the husband has property on which a gross annual sum can be secured, the Court has no power under the Amendment Act of 1866 to order a weekly or monthly payment, and it is immaterial that the property of the husband and the husband himself are out of the jurisdiction.

Neither under section 32 of the Divorce Act nor the Amendment Act can the Court make an order in the alternative, directing a weekly or monthly payment in the event of failure to secure a gross sum.

This was an appeal by a husband from an order made on the 29th of April, 1882, by the President of the Probate, Divorce and Admiralty Division. The wife had obtained a decree for dissolution of marriage on the ground of desertion since November, 1878, and adultery, by a bigamous marriage at Chicago, in January, 1879.

By the order appealed against it was ordered that the husband should, to the satisfaction of the Court, secure to the wife the gross sum of 7,500*l.* within one month, or that within the same time he do secure to the wife the sum of 500*l.* per annum for her life; "and in the event of his not doing so, then that he pay to the petitioner (the wife) the sum of 500*l.* per annum, by equal monthly payments of 4*l.* 13*s.* 4*d.*, the first payment to

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be made on the 29th day of June, and the succeeding payments to be made respectively on the 29th day of each following month." The marriage took place in November, 1877, and the parties, who had cohabited before marriage, separated in the following year, an allowance of 500*l.* per annum being then agreed to be made by Mr. Medley to his wife. After the dissolution of the marriage Mrs. Medley filed a petition for permanent maintenance. Mr. Medley, who resided in Paris, did not, though summoned, attend before the Registrar to be examined as to his means, and on the Registrar's finding that the value of his property might be taken to amount to 34,600*l.* at least, and his present income at not less than 1,600*l.* per annum, the President made an order in the terms above stated.

Searle (McIntyre, Q.C., with him), for the appellant, contended that the amount was excessive, and that the provision *dum sola et casta viverit* should be inserted, in accordance with the usual practice, when the husband who was ordered to make the provision for the wife asked for its insertion—*Fisher v. Fisher* (1).

Inderwick, Q.C., referred to *Gladstone v. Gladstone* (2).

[The Court called the attention of counsel for the respondent to the alternative form of the order.]

Inderwick, Q.C., and *R. A. Bayford*, for the respondent.—The husband has no property within the jurisdiction on which the gross sum directed to be paid can be secured, and he is himself also out of the jurisdiction. The Amendment Act of 1866 empowers the Court to order a monthly or weekly payment in cases where the Court thinks that an order, under section 32 of the Divorce Act of 1857, for securing payment of a gross sum will be useless. It is submitted that there is nothing in either Act to prohibit such an alternative order in the circumstances of this case.

JESSEL, M.R.—First of all as regards the substance of this appeal—that is, the

amount ordered to be paid—it is plain on the evidence that not only ought we not to differ from the learned Judge in the exercise of his discretion, but I should say, speaking for myself, that the amount is not too large: certainly not more than I should have given to the wife. The husband will not give information as to his means. It appears from the report of the Registrar that he has 30,000*l.* at least—how much more we do not know; and it appears that he had on the occasion of his separating from the petitioner agreed to make her an allowance of 500*l.* a year, and the order gives her no more. As regards the second point—namely, the insertion of the proviso, *dum sola et casta viverit*—it appears from the shorthand notes of what took place before the learned Judge that he has not decided that point adversely to the appellant; all he says is that he will not insert it in the order—but he leaves the question to be decided when the deed is settled—and, therefore, on that point the appellant has nothing to complain of.

On the next point, however, I think that the appellant is entitled to succeed. When we look at the terms of section 32 of the Divorce Act, 1857, it uses the word "secure" in a very curious way: it is not that the husband shall "pay," a word which is quite familiar to a draftsman, but shall "secure to the wife such gross sum of money, or such annual sum of money, for any term not exceeding her own life, having regard," &c. The gross sum of money is there contrasted with the annual sum, but both are to be "secured."

When you look at the end of the same section you will find this, "and upon any petition for dissolution of marriage, the Court shall have the same power to make interim orders for payment of money by way of alimony or otherwise to the wife, as it would have in a suit instituted for judicial separation." There you have "payment" as contrasted with the word "secure." I cannot help thinking that the intention of the Legislature was that the gross sum was to be secured as a gross sum, and not to be paid over at once, but from time to time. That is to say, you might apply the income of it, and perhaps part of the capital fund, at stated periods, or during life, for the benefit of the wife.

(1) 2 Sw. & Tr. 410.

(2) 45 Law J. Rep. P. D. & A. 82; Law Rep. 1 P.D. 442.

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It is a gross sum in that sense. That would give a meaning to the word "secure" as contrasted with "payment"—to secure it, so as to be ultimately the property of the wife.

But what convinces me that the word "secure" does not include "payment" is the Amendment Act of 1866, because if the word "secure" would include payment, the later Act would be useless. The payment is of any sum of money for any term not exceeding her life—any annual sum of money. Now it is quite true that the annual sum of money might not be a monthly or weekly sum of money, but of course if you have an annual sum of money it can be made payable at any time. It would hardly be said, I think, that you would need an Act of Parliament to direct an annual sum of money to be paid quarterly. It cannot be maintained that under the earlier Act the annual sum of money is to be paid only once a year. That is too narrow a construction to put upon the Act. In fact, we know that annual sums of money are constantly, and rents and annuities are generally, made payable quarterly.

When we look at the recital in the Act, it appears to point that way. It says that judgment is sometimes obtained against a husband "who has no property on which the payment of any such gross or annual sum can be secured; but, nevertheless, he would be able to make a monthly or weekly payment to the wife during their joint lives." Now, the words "who has no property" mean no property which he can make available for the purpose; and this answers an argument which was addressed to the Court, as to his having property out of the jurisdiction. If he has property out of the jurisdiction, he can make it available. The difficulty lies not in the fact that the property, but that the husband is out of the jurisdiction. There would be no difficulty if he were here, because he could be attached for not securing on his property abroad the sum awarded under the 32nd section.

Looking, therefore, at the statutes as they stand it appears to me that it was not intended by the earlier Act to order direct payment to the wife. There is a case, to which we have been referred, of

Ratcliffe v. Ratcliffe (3), in which the view was taken by the full Court that an order to pay was not warranted by the Act; but I do not find any reason given except that it was not according to the terms of the earlier Act. Then, if that is so, you cannot order the husband to pay because he has property on which the annuity could be secured. The only difficulty is one which has not been provided for by the Act, namely, the fact that the husband is not within the jurisdiction. Besides that, as it appears to me, in no case do the Acts warrant an alternative order. The petitioner must go under one Act or the other. It is plain to me that the later Act only applies where the husband has no property on which you can obtain a security under the earlier. It cannot be held to enable the Court to make such an alternative order as has been made in the present case that if the husband does not secure he is to pay a sum of money.

That being so, I think that this part of the order must be discharged. But it is certainly a case for making the husband pay the costs of the appeal.

LINDLEY, L.J. — I am of the same opinion. The first question which arises here turns upon the true construction of the Divorce Act, 1857. At first sight, one might possibly be inclined to read the word "secure" in that section as including payment—the object of the section being of course to produce payment. But when we look at the language of the section, and especially of the amending section in the later Act of Parliament, I think that it becomes plain that the word "secure" in the 32nd section does not include "payment." The word "secure" was used, and deliberately used, to mean exactly what the word does mean in the narrower sense—that is, to authorise the Court to order the husband to secure or provide a fund for the payment to his wife of a gross sum, or of an annual sum, during her life. That being the case, the part of the order which directs payment cannot be sustained by the 32nd section. Then the later Act of 1866 (29 Vict. c. 33. s. 1) only authorises the Court to direct payment when the

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husband has no property available for securing the sum ordered to be secured under the earlier Act. It would not, I think, be right to read the second Act in the sense suggested—that is, to make it apply to the case of a man who has plenty of property abroad, and is, therefore, abundantly able to secure to his wife the provision which may be ordered, but who does not happen to have property in this country. That cannot be. The object of the Act is to authorise and enable the Court to make an order for payment as against the man who has not got property anywhere on which he can secure the provision to be made. I do not see how, under the one section or the other, that part of the order, which I may call the second part, which commences with the words, “in the event of his not doing so, then to pay,” can be authorised by the Act of Parliament.

As regards the sum it is certainly not a case for reducing it, considering the reticence of the husband and his means as ascertained.

As regards the point whether the security should be confined to the period during which the divorced wife should live chaste and unmarried, that appears to be left in this way. The Act of Parliament says nothing about it, but it does say that the Court shall make an order that the husband shall to the satisfaction of the Court secure to the wife such sum, and then provision is made for settling such deed as may be necessary for that purpose; and the question whether this provision should be cut down in any way is left by the order to be considered when the security is settled. That seems to be the ordinary course, and I see no reason for departing from it. I see nothing objectionable in the terms of the order—whether the form of the security would follow the order or not is a matter further to be considered, if ever the opportunity should arise. It appears to me that the right thing to do is to strike out the alternative or second portion of the order. I see great difficulty in supporting that part of the order. In fact, I cannot see how it can be supported under the Act of Parliament as it stands. I think, however, with that variation the order ought

to be affirmed, and the husband ought to pay the costs of the appeal.

BOWEN, L.J. — I am of the same opinion.

Inderwick, Q.C., asked for leave to appeal to the House of Lords under the 9th section of 44 & 45 Vict. c. 68.

JESSEL, M.R.—I am afraid we cannot give leave. This jurisdiction was given to be exercised. It meant that leave was to be given if the case was one of such difficulty that the Court thought it proper that it should be carried to the House of Lords. I cannot say that, to my mind or to the minds of my learned colleagues, this is such a case, and we must therefore refuse the application.

Solicitors—Harwood & Stephenson, for appellant; Eardley, Holt & Richardson, for respondent.

ADMIRALTY. }

1882.

July 25.

August 1. }

THE ELIN.

Liens, Priority of—Damage—Wages.

The owners of a vessel who have recovered judgment against another ship in an action for damage by collision have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned before and after the collision.

This was a Special Case stated for the opinion of the Court, and raised the question whether wages earned subsequently to a collision have priority over the claim for damages arising out of such collision.

Judgment had been recovered by the claimants in both the action for damages and for wages, the defendants having admitted their liability in the first action on the 28th of December, 1881, and judgment having been recovered in the latter action on the 7th of March, 1882. The *Elin* had been sold under an order of the

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Court, and the claimants in the wages action desired an order for payment out of the amount due to them. Such order was resisted by the owners of the *Paria*, the plaintiffs in the damage action, the proceeds of the sale of the ship being insufficient to satisfy the claims in full; and thereupon a Case was stated to raise the question whether the plaintiffs in the damage or the wages action were to have priority against the proceeds of the *Elin*. The master, who had originally been a plaintiff in the wages action, discontinued his claim, and the seamen abandoned their claim for wages earned prior to the collision, and only maintained their right in respect of those earned after the collision.

Stokes, for the plaintiffs in the damage action.—The question is settled by authority—*The Linda Flor* (1), *The Benares* (2) and *The Duna* (3).

Phillimore, for the seamen.—The general rule of maritime law is that posterior liens have priority over prior liens. In *The Linda Flor* (1) Dr. Lushington drew no distinction between wages earned before and after a collision (4). The principle I contend for has been laid down by the Privy Council in *The Bold Buccleugh* (5). He referred to *The Aline* (6) and *The Union* (7).

Stokes, in reply.

Cur. adv. vult.

SIR ROBERT PHILLIMORE.—This is a Special Case, stated in order to obtain a decision between two competing maritime liens on the proceeds of a vessel sold by the Marshal of this Court.

The facts are shortly as follows: The Russian barque *Elin* came into collision with the *Paria* in November last, and both vessels sustained injury. After the collision salvage services were rendered to the *Elin*, and she was safely brought into

the port of London by her own crew, with the assistance of the salvors. Shortly afterwards four separate actions were brought against the *Elin*: the first by the owners of the *Paria* for damages caused by the collision; the second and third, which were consolidated, by two sets of salvors respectively; and the fourth by her own master and crew for wages earned both before and after the collision, for ten days' double pay, and the expenses of their journey home.

In the first action the owners of the *Elin* admitted damages, and the vessel was, on the application of the owners of the *Paria*, sold by the Marshal, and the proceeds paid into Court. In the consolidated salvage actions judgment was given against the *Elin*, and the amount has been paid out of the proceeds of sale. In the fourth action the crew obtained judgment for their wages, and ten days' double pay, and their expenses home; and the master obtained judgment for his expenses home only. The proceeds of sale are insufficient to satisfy the amounts awarded by the Court, both to the owners of the *Paria* and to the master and crew of the *Elin*. It is admitted that the claim of the *Paria* takes precedence over the claim of the master, and also over that of the crew, so far as regards wages earned before the collision; but a question has been raised as to whether the *Paria* can demand priority over the wages earned by the crew after the collision, the ten days' double pay, and the expenses of their journey home. It is to decide this point that the Special Case has been stated, in which it is agreed that the questions for the decision of the Court are—Whether the owners of the *Paria* are entitled to have their claim satisfied out of the balance of the said fund in Court in priority to the wages of the crew of the *Elin* earned subsequently to the date of the collision, their ten days' double pay, and their expenses home, or in priority to any and which of these sums? secondly, how the costs of and incidental to this case are to be borne? Various decisions were cited to me as bearing upon the subject. Some of them relate to questions of civil contract, such as bottomry, and not to liabilities arising out of a *delictum*, such as

(1) Swa. 309; 6 W.R. 197.

(2) 7 No. of Cases (App. L.)

(3) 5 L.T. N.S. 217

(4) The report of the *Linda Flor* in the *Weekly Reporter* states that the wages claimed were earned "prior and subsequent to the collision;" that in *Swabey* does not give this fact.

(5) 7 Moore P.C. 267.

(6) 1 W. Rob. 111.

(7) Lush. 128.

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damages occasioned by a collision; but there is one case which is binding upon me. That is the case of *The Linda Flor* (1), decided by Dr. Lushington after careful consideration in 1857. In this case the facts were very similar to those of the present case, priority for wages earned both before and after the collision being claimed over damages occasioned by the collision.

Dr. Lushington says: "This is a foreign vessel proceeded against in a cause of damage, and condemned to pay that damage. The master and crew have commenced proceedings for their wages. The owner of the vessel and cargo receiving the damage object, because the proceeds are insufficient to satisfy all the claims, and therefore the consequence would be that those who have suffered from a wrong-doing would recover less than their loss. The same question was agitated in the case of *The Chimera* (8), and I was then of opinion that the mariner could not maintain the claim to the prejudice of the parties damnified by the collision. I adhere to this opinion, and I do so especially for the following reasons: That by the maritime law of all the principal maritime States the mariner has a lien on the ship for his wages against the owner of that ship; that he has a right of suing the owner for wages due to him. That some uncertainty may exist as to the mariner's lien when in competition with other liens or claims, and amongst these I might instance the case of a ship in the yard of a shipwright. In such a case I should have no difficulty in saying that the lien of the shipwright would be superior to the lien of the mariner. That in the case of a foreign ship doing damage and proceeded against in a foreign Court, the injured party has no means of obtaining redress save by proceeding against the ship herself; and that, I apprehend, is one of the most cogent reasons for all our proceedings *in rem*. That in a case where the proceeds of a ship are insufficient to compensate for damage done, to allow the mariner to take precedence of those who have suffered damage would be to exonerate so far the owner of the ship to whom the damage is imputed at the expense of the injured

(8) Not reported.

party—the wrongdoer at the expense of him to whom wrong has been done. Then, as to the mariner, what is the hardship to which he is exposed? It is true he is debarred from proceeding against the ship, but his right to sue the owner remains unaffected. It is, however, not to be forgotten that in all these cases of damage, or nearly all, the cause of the damage is the misconduct of some of the persons composing the crew. This is not the case of a bankrupt owner; it will be time to consider such case when it arises."

The authority of this case has never been questioned, and has always been treated as undoubted law.

In *The Duna* (3), a case decided in the Irish Admiralty Court in 1861, *The Linda Flor* (1) was followed. An elaborate judgment was delivered, in which the principles on which that decision rested were fully set forth, and the distinction was pointed out between an obligation *ex contractu*, which is the basis of an action for wages, and an obligation *ex delicto*, upon which the liability for damage is founded. The question is, therefore, not *res integra*; and I consider myself bound by the decision in *The Linda Flor* (1), and I decide on all the points raised in the Special Case in favour of the owners of the *Paria*. The costs, which are in my discretion, I shall give out of the fund.

Solicitors—Stokes, Saunders & Stokes, for plaintiffs; Robert Greening, for seamen.

DIVORCE. }
1882. }
May 11. }

ROSE v. ROSE.

Separation, Deed of—Cruelty—Covenant not to sue—Subsequent Adultery—Revival.

A husband and wife executed a deed of separation, which contained a covenant on the part of the wife that she would not, in any subsequent proceedings against her husband, avail herself of any of his previous acts. After the execution of the deed the husband was guilty of adultery, and the wife commenced a suit for a dis-

Rose v. Rose, Div.

solution of the marriage:—Held (*following Gandy v. Gandy, Ante, p. 41*), *that cruelty committed by the husband before the date of the deed of separation was not revived by his subsequent adultery, and that the wife was not entitled to relief in respect of such cruelty.*

This was a wife's petition for a dissolution of marriage, on the ground of her husband's cruelty and adultery, and was tried before the President of the division without a jury.

The parties were married in 1861, and lived together at Woolwich, and afterwards at Chelsea, the respondent being a publican. Frequent quarrels occurred, and several acts of violence were committed by the respondent.

In 1877 the parties executed a deed of separation, which contained a covenant on the part of the wife that she would not, in any future proceedings against her husband, avail herself of any of his acts of which she might have had reason to complain before the date of the deed.

The respondent admitted that after the separation he had been guilty of adultery.

The petitioner alleged acts of cruelty, both before and after the date of the deed, but failed to prove any cruelty after the separation.

Dr. Tristram, Q.C., and J. Thompson,
for the petitioner.

W. Wills, for the respondent.

THE PRESIDENT (SIR JAMES HANNEN).—The adultery has been established, but as to the other charge my impression on the whole is that cruelty before the deed of separation was established, but that cruelty after it was not. In that deed there was a covenant on the part of the wife, that in any subsequent proceedings against her husband she would not avail herself of any acts of which she might have had reason to complain before the execution of the deed. According to the former practice of this division, adultery committed after a deed of separation would have revived cruelty committed before it was executed; but the Court of Appeal in *Gandy v. Gandy* (1) held that there was no implied

(1) *Ante, p. 41.*

condition in a separation deed that both parties should live chastely, and therefore that the contract in the separation deed was unaffected by the subsequent misconduct of the party. This Court is bound to act upon that decision, and therefore I refuse to pronounce a decree dissolving the marriage. There will be a decree of judicial separation, with costs.

Solicitors—Hicklin & Washington, for petitioner; W. D. Smyth, for respondent.

DIVORCE. }
1881. } WHITTAKER v. WHITTAKER.
Dec. 20. }

Costs—Attachment of Debt—Receiver—Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, sub-s. 8.

Where a respondent in a divorce suit had failed to obey an order for payment of costs, the Court granted an order nisi attaching a debt due to the respondent, and also an order nisi for a receiver.

This was a wife's suit for dissolution of marriage. After the decree absolute the respondent was ordered to pay to the petitioner's solicitors the sum of 82*l.* 0*s.* 4*d.* for costs, but he had failed to do so.

The Lancashire Cotton Spinning Company (Limited), were indebted to the respondent in two separate sums of 800*l.* and 100*l.*

C. A. Middleton, for the petitioner, moved (in Chambers) for an order nisi attaching the debts due to the respondent from the Lancashire Cotton Spinning Company, and for an order nisi against the respondent for a receiver. He referred to section 25, sub-section 8, of the Judicature Act, 1873, and *Smith v. Cowell* (1).

THE PRESIDENT (SIR JAMES HANNEN) made the order asked for.

Solicitors—Gregory & Co., agents for A. & G. W. Fox, Manchester, for the petitioner.

(1) 50 Law J. Rep. Q.B. 38; Law Rep. 6 Q.B. D. 75.

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
 1882. } THE MAC.*
 June 30, July 3. }

Salvage—"Ship"—*Jurisdiction of Justices*—*Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), ss. 2, 458 and 460—"Ship or Boat Stranded or otherwise in Distress on the Shore of any Sea or Tidal Water."

A hopper used for dredging purposes, not fitted with oars or other means of propulsion, and generally moved by towing, is a "ship" within the meaning of the *Merchant Shipping Act*. Such a vessel, adrift about three miles from the Boston shore, with no one on board, is a "ship in distress on the shore of a sea or tidal water," and the Justices have jurisdiction to award salvage to those who rescue her.

This was an appeal from the judgment of Sir Robert Phillimore in the Admiralty Division, reversing the decision of the Justices of the peace for the borough of King's Lynn awarding 50*l.* by way of salvage to the owners of the smack *Saucy Polly* as against the owners of the *Mac*.

The case in the Court below is reported *Ante*, p. 20.

The *Mac* was a barge with a bow, stern and rudder, and was steerable. She was seventy-three feet long and nineteen feet wide, constructed of iron plates three-sixteenths of an inch thick, riveted throughout, and had air-tight compartments at the side and a cabin at each end. She was used as a hopper, and had lifting doors and apparatus all complete. She had no oars or sails, and was generally towed, though she would drive with wind and tide.

On the night of the 14th of October, 1881, she was found by the *Saucy Polly* in the Wash, about three miles from the Boston shore, drifting seaward. She was boarded and anchored, and eventually towed by the *Saucy Polly* into Boston harbour. There was a heavy gale from the north-west blowing at the time.

Bucknill, for the owners of the *Saucy Polly*, contended that the *Mac* was found

* *Coram* Lord Coleridge, C.J.; Brett, L.J., and Cotton, L.J.

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at sea, and therefore must be held capable of going to sea—if so she must be considered a ship—*Ex parte Ferguson* (1). She was, moreover, capable of being towed; and there is no case that decides that a "ship" must be able to propel herself. In the *Andalusian* (2) an unfinished vessel being launched was decided to be a "ship."

W. G. F. Phillimore, for the owners of the *Mac*.—No vessel which is incapable of moving herself can be a ship, nor can one that does not go to sea. The *Mac* was used solely for dredging purposes, and cannot be a "ship"—*The C. S. Butler* (3). Until 3 & 4 Vict. c. 65. s. 6, there was no jurisdiction in the Justices in respect of salvage arising within the body of a county, and the jurisdiction given by that section extended only to ships or sea-going vessels—*The Raft of Timber* (4); but by 9 & 10 Vict. c. 99. s. 40, the jurisdiction of the magistrates is extended to all cases. These various enactments have been codified by the *Merchant Shipping Act, 1854* (17 & 18 Vict. c. 104), ss. 458 and 460 (5), and

(1) 40 Law J. Rep. Q.B. 135; Law Rep. 6 Q.B. 280, 291.

(2) 46 Law J. Rep. P., D. & A. 77; Law Rep. 2 P. D. 231; *ibid.* 3 P. D. 182, 189.

(3) Law Rep. 4 Adm. & Ec. 238.

(4) 2 Wm. Rob. 251.

(5) 17 & 18 Vict. c. 104. s. 2: In the construction and for the purposes of this Act (if not inconsistent with the context or subject-matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say—

"Ship" shall include every description of vessel used in navigation not propelled by oars;

Section 19: Every British ship must be registered in manner hereinafter mentioned except—

1. Ships duly registered before this Act comes into operation;

2. Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident;

3. Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portions of the coasts of Canada, Nova Scotia or New Brunswick as lie bordering on such gulf.

Section 458: In the following cases (that is to say)—Whenever any ship or boat is stranded

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enlarged by the Merchant Shipping Act of 1862, but it is still necessary that the sub-

or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person,

1. In assisting such ship or boat;
2. In saving the lives of the persons belonging to such ship or boat;
3. In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a receiver within the United Kingdom;

There shall be payable by the owners of such ship or boat, cargo, apparel or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Section 460: Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof, by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds, such disputes shall be referred to the arbitration of any two Justices of the peace resident as follows; that is to say—

In case of wreck, resident at or near the place where such wreck is found;

In case of services rendered to any ship or boat, or to the persons, cargo or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises;

But if the sum claimed exceeds two hundred pounds, such dispute may, with the consent of the parties, be referred to the arbitration of such Justices as aforesaid; but if they do not consent shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the Court certifies that the case is a fit one to be tried in a Superior Court, recover any costs, charges

ject of salvage should be a "wreck, ship or boat"; and in the case of *Palmer v. Rouse* (6), timber found floating without an apparent owner at sea, having drifted from its moorings in the river, was decided not to be "wreck" within the meaning of that statute. It is submitted that this is neither wreck, ship nor boat, and therefore not within the jurisdiction of the magistrates.

The decision in *Ex parte Ferguson* (1) was founded on section 242, sub-section 2, and the definition clause, but avails for the owners of the *Mac*, since she was used only for dredging purposes, and must remain in shallow water, and therefore cannot be a sea-going vessel.

The vessel saved must not only be a ship, but must be "stranded or otherwise in distress on the shore."

[This argument was objected to by Bucknill, for the owners of the *Saucy Polly*, on the ground that there was no cross appeal by the owners of the *Mac*; but it was held *per Curiam* that, as the decision of the Court below was in favour of the owners of the *Mac*, they could not appeal against the reasons on which that judgment was founded, and that the point might therefore be raised.]

It was held in *The Leda* (7) that "on the shore" means "near the shore"; but if the Legislature had meant to include cases where the vessel is not aground, it would have used the expression "on or off the shore."

Bucknill was not called on to reply.

LORD COLERIDGE, C.J. — Two points have been made in this case, one of which supports the judgment of the Court below, the other attacks the reasons for a view of the case favourable to the respondents taken by the Judge on one point.

I am of opinion that the decision of the Court below that the *Mac* is not a "ship" within the meaning of the Merchant Ship-

or expenses incurred by them in the prosecution of their claim;

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property saved, or of their respective agents.

(6) 3 Hurl. & N. 505; 27 Law J. Rep. Exch. 437.

(7) 1 Sw. & Tr. 40.

The Mac (App.), Adm.

ping Act, 1854, cannot be supported. The point here is not whether the *Mac* was used for the purposes of navigation, because the definition in section 2 (5) is inclusive, and does not exclude other meanings of the word "ship" than "vessel used in navigation." It is clearly, in my judgment, a ship. At first sight it may appear to be going very far in interpretation so to hold, but it is almost impossible to get any definition that will not include this. The definition cited in *Todd's Johnson's Dictionary* of the word "ship" from Horne Tooke, a great master of language, as "*formatum aliquid*, in contradistinction from a raft for the purpose of conveying merchandise, &c., by water, protected from the water and the weather," certainly covers this, and my mind would find great difficulty in coming to the conclusion that this was not "a ship." This, then, would decide the case, but that in the Court below it was decided on the precise ground that the *Mac* was not a "ship." And it is now contended that the judgment for the owners of the *Mac* may be supported on the ground that, even if a "ship" within the meaning of the statute, the *Mac* was not "stranded or otherwise in distress on the shore," and that it was necessary for her to have been "stranded or otherwise in distress on the shore" to give jurisdiction to the Justices. The learned Judge in the Court below deemed himself, and I think he was, bound by the decision of *The Leda* (7), and on that decision he founded his judgment. That case clearly decided that "on the shore" could not have its strictly physical meaning, but meant near the shore. But apart from authority by which this Court is not bound, the phrase "otherwise in distress" clearly points to some mishap that is not stranding, and shews that "on the shore" does not mean exclusively "touching the ground." In my judgment, therefore, *The Leda* (7) was rightly decided, and the learned Judge in the Court below was bound to follow the decision, and on this point the owners of the *Mac* cannot succeed.

BRETT, L.J.—In my judgment this case comes within the words of section 468 (5) without the aid of the interpretation clause, and is also within the interpreta-

tion clause. The words used are "ship or boat stranded or otherwise in distress." It cannot be contended that "ship" is used in a strictly nautical sense, and if not so used it includes the various kinds of vessels, ships, barques, brigs, schooners, sloops, cutters, and, in fact, includes anything floating in or upon the water used for a particular purpose. This is built for the particular purpose of dredging, and though as a fact it only carries mud on the water, it yet might carry anything else. But it is said that she has no motive power within herself—that she requires to be towed. That may be, but towing is not enough, she must be steered, and in fact have a rudder, and she must have men on board to steer her. In fact, it is a barge, and unless you confine the word "ships" to nautical phraseology it must include barge as well as any other kind of vessel. It may be that a barge propelled by oars is not within the definition, but the interpretation clause is not restrictive, and a vessel not propelled by oars is within it. Nor is anything said about seagoing in the clause. I think this hopper, used for carrying men and mud and for dredging, is used in navigation for the purposes of navigation. But it is said that she has not any power of motion within herself; but a saloon barge with 200 passengers on board being towed down the river Mersey to vessels lying at the mouth would be used for purposes of navigation, and in my judgment this mud-hopper was so used.

Then it is said that the *Mac* was not "in distress on the shore." That phrase does not in my judgment mean hard and fast on the shore, but in the vicinity, and the nautical interpretation of it is that which the Legislature in this, as in other Acts, intended.

COTTON, L.J.—The jurisdiction of the Justices is limited by the statute to cases of ships or boats stranded or otherwise in distress on the shore, and ships are by the interpretation clause described as "every description of vessel used in navigation not propelled by oars." First it has been argued that the *Mac* was not a ship. Now a ship is a generic term for what is created for the purpose of going on the water. Johnson, quoting from Horne

The Mac (App.), Adm.

Tooke, describes it as *formatum aliquid*, and speaks of a boat as a ship of a small size. I think it should be, "something hollowed out." But it is said that a ship must be capable of going to sea, and for this the judgment of Mr. Justice Blackburn in *Ex parte Ferguson* (1) was called in aid, but I think he meant rather to decide that a sea-going vessel must be a ship than that a vessel not adapted for sea voyages is not a ship. I do not think that it is necessary for a vessel to be sea-going in order to make it a ship within the Merchant Shipping Act, 1854; and section 19 (5), which enjoins the registration of British ships, "except ships not exceeding 15 tons burden employed solely in navigation on rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident," supports this view. I therefore have no doubt that this mud-hopper is a "ship." In my judgment also it is a "vessel used in navigation." The question whether it be so or not does not depend on whether she had or had not a cargo. She had men on board and appliances for steering, and she was navigating, that is, carrying by water. As to whether she was, within the meaning of the statute, "on the shore" I think the contention of the counsel for the owners of the *Mac* cannot be maintained, as it was rightly decided in *The Leda* (7) that "on the shore" means "near the shore."

Appeal dismissed with costs.

Solicitors—Tompson & Co., agents for Archer & Archer, King's Lynn, for the owners of the *Saucy Polly*; Whyte, Collison & Prichard, agents for H. Snaith, Boston, Lincolnshire, for the owners of the *Mac*.

DIVORCE. }
1882. }
May 16; }
June 6. }

WIGNEY v. WIGNEY.

Settlements—Variation of—Mortgage by Husband—Solicitor—Costs of Divorce Suit—Lis pendens—22 & 23 Vict. c. 61. s. 5.

Although the Court, in directing a variation of settlements after a decree dissolving

a marriage, has power, under the 22 & 23 Vict. c. 61. s. 5, to make an order affecting the interests of third parties created before the date of the petition for variation of the settlements, the interests of mortgagees created before that date will, as a general rule, be respected.

An ante-nuptial settlement of a sum of 40,000l. gave the husband a first life interest in 15,000l., and a second life interest in the remainder of the fund. All the settled property was derived from the wife, the husband having no property of his own, except a military pension of 120l. per annum. There was no issue of the marriage. The wife obtained a decree nisi for a dissolution of her marriage on the ground of her husband's adultery and cruelty. Shortly before the decree nisi was pronounced, the respondent, who had previously borrowed 4,200l. upon the security of his life interest under the settlement, and of certain policies of insurance upon his own life, executed a further mortgage of his life interest in favour of his solicitors, to secure their costs in the divorce suit. After the decree nisi had been made absolute, the petitioner presented a petition for variation of the settlement.

The Court, although it had ordered that the respondent's interest in the settled property should be extinguished, refused to make an order declaring that the interest of the respondent's solicitors under the second mortgage was thereby determined.

This was a wife's petition for a dissolution of marriage on the ground of her husband's adultery and cruelty.

The parties were married on the 16th of December, 1863, and by a settlement executed in contemplation of the marriage, a sum of 40,000l. was settled upon certain trusts, under which, as to the sum of 15,000l. the trustees were to pay the income to the husband and his assignees, during his life, and after his death to the wife for life, and as to the sum of 25,000l. they were to pay the income to the wife during her life, and after her death to the respondent and his assignees during his life. After the death of the husband and the wife the fund was to be held in trust for the children of the marriage, and in default of issue in trust as the wife should

Wigney v. Wigney, Dir.

by will appoint, and in default of appointment for the husband absolutely. There was no issue of the marriage.

The above-mentioned sum of 40,000*l.* was derived from the wife, and the husband had no property of his own, with the exception of a pension of 120*l.* per annum as a retired officer of the Indian Staff Corps.

A decree *nisi* for the dissolution of the marriage was pronounced on the 2nd of July, 1880, and was made absolute on the 11th of January, 1881. On the 2nd of July, 1880, before the decree *nisi* had been pronounced, the respondent, who had already borrowed 4,200*l.* (which he had expended for household purposes during his cohabitation with the petitioner) upon the security of his life interest under the settlement and of certain policies of insurance upon his own life, executed a further charge upon the same life interest in favour of Messrs. Saunders & Stokes, who had acted as his solicitors in the divorce suit, to secure the sum of 215*l.*, and whatever further sum they should become entitled to in respect of the divorce proceedings.

On the 2nd of February, 1881, the petitioner presented a petition for variation of the marriage settlement. The Registrar reported that the annual income of the fund in which the respondent had a first life interest under the settlement amounted to 948*l.*, and that the annual income of the fund in which the petitioner had a first interest amounted to 1,165*l.* The Registrar's report proposed that the respondent's interest in the settled property should be extinguished, and that the trustees should hold the property and apply the income upon the trusts which would be applicable if the respondent had died before the petitioner, and that the property should be free from the ultimate trust in his favour.

The report of the Registrar was confirmed by the President of the Division, without prejudice to the interests of the first mortgagees, the question of the rights of Messrs. Saunders & Stokes under the second mortgage being reserved at the request of the parties; and this decision was afterwards affirmed by the Court of Appeal (1).

(1) *Ante*, p. 60.

An application was now made, on behalf of the petitioner, for an order declaring that the derivative interest, if any, of Messrs Saunders & Stokes in the settled property had been determined by the extinguishment of the respondent's interest under the settlement.

Inderwick, Q.C., and *C. A. Middleton* (on May 16), in support of the motion.—At the time of the execution of the mortgage in favour of the respondent's solicitors there was a *lis pendens*, and they must be taken to have had notice that, in the event of the marriage being dissolved, the Court would have power to extinguish the respondent's life interest under the settlement.

They referred to *Bellamy v. Sabine* (2) and *Noakes v. Noakes and Hill* (3).

Farwell, for Messrs. Saunders & Stokes.—At the time when he executed the mortgage the respondent's life interest under the settlement was unaffected, and there was no *lis pendens* with reference to the settlement, the petition to vary which was a fresh proceeding, and could only be presented after the dissolution of the marriage.

He referred to *Perkins v. Bradley* (4), *Choune v. Baylis* (5) and *St. Paul v. St. Paul and Farquhar* (6).

Inderwick, in reply.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on June 6).—In this case a decree *nisi* for a dissolution of marriage on the ground of the adultery and cruelty of the husband was pronounced on the 2nd of July, 1880, and was made absolute on the 11th of January, 1881, and on the 2nd of February, 1881, the petitioner presented a petition for variation of her marriage settlement executed on the 18th of September, 1863. By that settlement the petitioner's fortune was settled upon certain trusts, under which, as to certain property, the income of which amounted to 948*l.*, the trustees were to pay that sum to the respondent and

(2) 1 De Gex & J. 566.

(3) 47 Law J. Rep. P., D. & A. 20; Law Rep. 4 P. D. 60.

(4) 1 Hare, 219.

(5) 31 Beav. 351; 31 Law J. Rep. Chanc. 757.

(6) 39 Law J. Rep. Prob. & M. 50; Law Rep. 2 P. & D. 93.

Wigney v. Wigney, Div.

his assignees during his life, and after his death to the petitioner for her life; while as to other property, the income of which amounted to £1,165*l.*, the trustees were to pay that sum to the petitioner for life, and after her death to the respondent and his assignees for his life, and on the death of the survivor, both funds were to be in trust for the children of the marriage, and in default of issue, in trust as the petitioner should by will appoint, and in default of appointment, for the respondent absolutely. The respondent brought no property into settlement, and has no income except a pension of 120*l.* as a captain in the army.

Before the date of the decree *nisi* the respondent had borrowed a sum of £4,200*l.* on the security of his life interest, and on the date of the same decree, but before it was actually pronounced, he executed a further mortgage of his life interest to his solicitors, Messrs. Saunders & Stokes, for 215*l.* and such further sum as they should become entitled to in respect of the divorce suit. On the hearing of the petition for the variation of the settlements I directed that the interest of the respondent in the settled property should be extinguished, but without prejudice to the mortgage for £4,200*l.* The question of the rights of the respondent's solicitors was not then before me, but had been reserved at the instance of the parties. I am now asked by the petitioner to declare that the derivative interest, if any, of Messrs. Saunders & Stokes in the settled property is determined by the extinguishment of the respondent's interest.

The authority upon which the Court is requested to act is conferred by the 22 & 23 Vict. c. 61. s. 5, which enacts that "the Court, after a final decree of nullity of marriage or dissolution of marriage, may enquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage or of their respective parents, as to the Court shall seem fit." I think that under this section the Court has power to make an order which may affect the interests of third parties created before the institution of proceedings for variation of the settle-

ments. For example, I have made an order in favour of a husband, although it prejudiced the rights acquired by the co-respondent through his marriage with the guilty wife. As a rule, however, it appears to me that the Court is bound to respect the rights of mortgagees created before the presentation of the petition for variation of the settlements, and I acted upon this principle in the present case. The Court of Appeal went even further, and ordered the wife to pay unsecured debts incurred by the husband in keeping up the household while the parties were living together, a question which had not been raised before me. I have, then, to consider whether I ought to deprive Messrs. Saunders & Stokes of the security for their costs which they obtained from the respondent on the day when the decree *nisi* was pronounced. I am asked to declare that their interest is already determined by the order extinguishing the husband's interest; but it is clear that I cannot do this, for the question was expressly reserved, and must therefore be determined on the merits, as if they had been investigated at the hearing of the petition for variation of the settlements.

It was urged on behalf of the petitioner that there was at the time of the creation of this charge a *lis pendens* with reference to the settlements, of which the solicitors had express notice; but I think this argument fails, since there was not and could not be any *lis pendens* as to the settlements till after the dissolution of the marriage. The question must, therefore, be considered upon such general principles as may appear applicable to the peculiar power with which the Court is invested, and all the circumstances must be taken into account. If the life interest of the respondent had extended to the whole income derived from his wife's property, and he had attempted to deprive her of all benefit from that property during his life, I should have thought myself justified in preferring the interests of the wife, at least to some extent, to those of the husband's creditors; but here the petitioner is in possession of a considerable property independently of her husband, who had no means of his own with which to pay his costs. The case, therefore, bears some analogy to that of a wife who is without the means of defending herself in a suit for

Wigney v. Wigney, Div.

dissolution of marriage—at least to this extent, that I do not think I ought to deprive the solicitors, who have not been guilty of misconduct, of a security for their reasonable costs given by the husband in exercise of legal rights of which he was at that time possessed. The charge of cruelty, upon which the petitioner's success in this suit depended, was not one to which his solicitors could see that there was no defence. I think that, in taking the security offered to them by their client, they cannot be deemed to have done anything inequitable towards the petitioner, although it is possible that they may have anticipated that her interests would be affected by the security which they acquired. I therefore refuse the application.

Solicitors—Ayrton & Biscoe, for petitioner;
Stokes, Saunders & Stokes, for respondent.

DIVORCE.
1882.
April 30;
June 6. }

BRADLEY v. BRADLEY.

Separation, Deed of—Permanent Maintenance—"Dum casta" Clause—Jurisdiction.

After a decree for a dissolution of marriage, on the ground of the husband's adultery and cruelty, the respondent was ordered to secure to the petitioner an annuity of 100*l.* per annum, and it was referred to one of the conveyancing counsel of the Chancery Division to prepare the necessary deed. After the deed had been prepared the respondent applied to the Court to insert a "*dum casta*" clause in the deed, but the Court refused the application, and the respondent executed the deed. The respondent afterwards moved for an order directing the deed to be delivered up to be cancelled, and the respondent to be released from his covenant, alleging that the petitioner had, since the execution of the deed, been living an unchaste life:—Held, that the Court had not jurisdiction to order the deed to be cancelled.

Semble, that the application to cancel the deed could only be entertained by the Chancery Division.

The petitioner in this case had obtained

a decree for a dissolution of marriage on the ground of her husband's cruelty and adultery. She afterwards presented a petition for permanent maintenance, and the Court ordered the respondent to settle an annuity of 100*l.* upon the petitioner, and directed that one of the conveyancing counsel of the Chancery Division should prepare the necessary deed.

After the draft deed had been prepared the respondent applied to the Court to direct the insertion in the deed of a condition that the annuity should be payable only so long as the petitioner should lead a chaste life, but the President of the Division refused to direct the addition of such a clause—*Bradley v. Bradley* (1).

It was now alleged by the respondent that, since the execution of the deed, the petitioner had been leading an unchaste life.

Dr. Tristram, Q.C., for the respondent, moved the Court for an order directing that the deed should be delivered up to be cancelled, and that the respondent should be released from his covenant.

[THE PRESIDENT.—Have I original jurisdiction to set aside the deed?]

It is an implied condition in a deed of this kind that the respondent shall live a chaste life. *Fisher v. Fisher* (2) is in my favour. *Gladstone v. Gladstone* (3) is distinguishable, since there all the settled property was derived from the wife; but, although the Court refused to insert the condition "*dum casta*" in the deed, it was pointed out that there would always be power to vary the order.

[THE PRESIDENT referred to *Hart v. Hart* (4).]

In that case the husband was a volunteer, but in the present case the respondent has executed the deed under compulsion.

He also referred to *Narracott v. Narracott and Heskeith* (5) and *Chetwynd v. Chetwynd* (6).

(1) 47 Law J. Rep. P. D. & A. 53; Law Rep. 3 P. D. 47.

(2) 2 Sw. & Tr. 410; 31 Law J. Rep. P. M. & A. 1.

(3) 45 Law J. Rep. P. D. & A. 82; Law Rep. 1 P. D. 442.

(4) 50 Law J. Rep. Chanc. 697; Law Rep. 18 Ch. D. 270.

(5) 4 Sw. & Tr. 77; 33 Law J. Rep. P. & M. 132.

(6) 35 Law J. Rep. Prob. & M. 21; Law Rep. 1 P. & D. 39.

Bradley v. Bradley, Div.

Dr. Swabey, for the petitioner.—The charge of unchastity is denied, but it is also submitted that the Court has no jurisdiction to make the order asked for, which is different from a mere variation of the deed. *Gladstone v. Gladstone* (3) is a direct authority against the present application, and *Hart v. Hart* (4) shews that a separation deed without the "*dum casta*" clause is not against public policy. The matter is *res judicata*, since the Court has already decided that the deed ought not to contain the condition which is now sought to be implied (1).

Dr. Tristram, Q.C., in reply.

Cur. adv. vult.

THE PRESIDENT (SIR JAMES HANNEN) (on June 6).—The marriage between the parties to this suit was dissolved on the 20th of November, 1877, on the ground of the husband's cruelty and adultery. The respondent was afterwards ordered to secure to the petitioner 100*l.* a year for permanent maintenance, and it was referred to one of the conveyancing counsel to the Chancery Division to settle and approve a proper deed for the purpose. The deed prepared by counsel did not contain a clause that the provision should be payable only so long as the wife should remain chaste, and I refused to order that such a clause should be inserted. The deed was executed on the 29th of July, 1878. It is now asserted that the petitioner has, since the execution of the deed, led an immoral life, and I am asked to cancel the deed on that ground. It was objected on behalf of the petitioner, without admitting the charge of unchastity, that I have not the power to cancel the deed, and I am of opinion that this contention is well grounded. The deed was settled in accordance with what I believe to be the practice in such cases. If I was wrong in refusing to order a *dum casta* clause to be inserted in the deed, that should have been made the subject of appeal at the time; but the deed once executed becomes, in the absence of fraud, binding according to its terms. I should add that if any ground for setting aside the deed had been established, that would fall within the description of business assigned to the

Chancery Division, and excluded from the jurisdiction of this division. I must refuse the application with costs.

Solicitors—Shaen, Roscoe, Massey & Henderson, for petitioner; Nash & Field, agents for Stuckey, Son & Jennings, Brighton, for respondent.

DIVORCE. }
1882. } MASON v. MASON AND MACLUNE.
July 11. }

Delay—Judicial Separation—Dissolution of Marriage.

A husband obtained a decree for a judicial separation, with damages against the co-respondent. He did not seek a dissolution of the marriage, since he hoped that his wife would return to him. More than three years afterwards he filed a petition for a dissolution of his marriage on the ground of his wife's adultery with the same co-respondent. The Court dismissed the petition on the ground of unreasonable delay.

This was a husband's petition. The parties were married in 1871, the petitioner being a baker at Rotherham. In 1876, the respondent committed adultery with the co-respondent MacLune, who was then in partnership with the petitioner. The latter condoned the adultery, but in 1877 his wife left him and went to live with the co-respondent.

The petitioner thereupon commenced a suit for a judicial separation, and in November, 1878, he obtained a decree, with 50*l.* damages against the co-respondent. He stated that he did not then ask for a decree dissolving the marriage, because he was in hopes of inducing his wife to return to cohabitation with him.

The respondent continued her cohabitation with the co-respondent, and gave birth to a child in 1879. The petitioner, having no longer any hope that his wife would return to him, commenced the present suit for a dissolution of his marriage.

Mason v. Mason, Dir.

Neither the respondent nor the co-respondent appeared, and the case was tried before the President of the Division without a jury.

C. A. Middleton, for the petitioner.

THE PRESIDENT (SIR JAMES HANNEN).—This cases raises a novel question, but the objection which has occurred to my mind has not been displaced. In 1878, the petitioner asked for a lesser remedy than he would then have been entitled to, namely, a decree for a judicial separation instead of a decree for a dissolution of marriage. In 1882, although it does not appear that he has in the meantime taken any steps with a view to induce his wife to break off her connection with the co-respondent, he asks for a dissolution of the marriage, alleging as his reason for not asking for such a decree before that he had hopes of getting his wife back to him. I cannot regard his reason as one extending over all time, or until he should alter his mind; and this being the only ground upon which he seeks to excuse his delay, I must dismiss the petition, since, in my judgment, it is shewn that he has been guilty of unreasonable delay.

Solicitors—Gregory, Rowcliffes & Co., agents for G. E. Pickering, Leeds, for petitioner.

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
1882. }
June 21. }

THE DOUGLAS.*

Damage by Collision—Wreck—Liability of Owner—Removal of Wrecks Act, 1877 (40 & 41 Vict. c. 16), s. 4—Evidence.

A steamship was wrecked and sunk in mid-channel in the Thames by a collision, in which she was at fault. One of her officers sent a message by the captain of a tug to inform the harbour-master of the wrecking of the ship, and the harbour-

* *Coram* Lord Coleridge, C.J.; Brett, L.J., and Cotton, L.J.

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master in reply said he would send and see to the wreck. He did not do so, and soon afterwards a ship of the plaintiffs' came into collision in the dark with the wreck. Evidence of what passed between the officers of the defendants' ship and the harbour-master was tendered and rejected, and the defendants were held liable to the plaintiffs in an action for damages:—Held (reversing the judgment of the Admiralty Division), that the evidence tendered ought to have been admitted, that there was no evidence of negligence on the part of the defendants, and that they were not liable.

Appeal from the judgment of Sir R. Phillimore.

The case is reported *Ante*, p. 55.

Action by the owners of the steamship *Mary Nixon*, against the owners of the steamship *Douglas*, for damage by collision.

It appeared that the *Douglas* had come into collision with the steamship the *Duke of Buckingham*, and had in consequence sunk. The *Douglas* then lay in the Gravesend Reach about mid-channel, with one of her masts above water. The *Mary Nixon* came into collision with the *Douglas* about midnight.

The defendants alleged in their defence that a light had been placed on the *Douglas* until she sank; that a reasonable time to exhibit lights as a warning on the wreck had not elapsed; that at the time when the collision took place the *Douglas* was a wreck; and that the defendants had wholly ceased to have possession, management or control of her.

At the trial before Sir R. Phillimore, evidence was tendered to shew that notice of the first collision was given to the harbour-master at Gravesend; that he said the proper wreck lights should be sent; and that this statement of the harbour-master was repeated to the officers of the *Douglas*. The evidence was rejected; but it appeared from a deposition made by the mate of the *Douglas*, that he told the captain of a tug to inform the harbour-master that the *Douglas* had sunk, and that the captain of the tug had told the mate that the harbour-master had said he would send down. The defendants claimed to be still owners of the *Douglas*.

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Sir R. Phillimore gave judgment for the plaintiffs.

The defendants appealed.

Bucknill, for the appellants.

Butt, Q.C., and *G. Bruce*, for the plaintiffs, cited *Brown v. Mallett* (1), *White v. Crisp* (2) and 40 & 41 Vict. c. 16. s. 4.

LORD COLERIDGE, C.J.—I am clearly of opinion that this judgment cannot be supported.

The question upon the evidence before us is, whether the defendants were guilty of negligence; and it appears to me that there was no negligence of which the plaintiffs can take advantage. After the *Douglas* had sunk, a light was placed in her rigging, and the master being taken in a boat to Gravesend, a request was made to the harbour-master there to take care of the wreck. It was objected that the conversation which took place between the harbour-master and the officer of a tug, by whom the message was sent, could not be given in evidence against the plaintiffs; and it was further said that if it could, yet it was immaterial; but I think the evidence was not immaterial, and that it ought to have been admitted. There was evidence that the representative of the defendants believed the harbour-master had undertaken to light the wreck. Now the harbour-master may exercise the powers of the Removal of Wrecks Act, 1877, and it is not necessary now to give any opinion on the construction of that Act, for in this case it appears he did undertake the duty. It is then said that the action can be maintained because the harbour-master did not perform that which he undertook to do; but it must be inferred upon these facts that the mate of the *Douglas* had reason to suppose he would do so.

There is, then, evidence that all was done that could reasonably be expected to be done, and there is no reason for saying that the officers of the *Douglas* were guilty of negligence. I do not think *Brown v. Mallett* (1) and *White v. Crisp*

(2) trench upon our decision, for in those cases it was assumed that the possession and control over the sunken ship must remain in the owners, in order to make them liable. Those cases may stand with this, for in *Brown v. Mallett* (1) the declaration did not shew the owner of the barge to be in possession at the time of the collision; and in *White v. Crisp* (2) the defendants had the control of the wreck.

BRETT, L.J.—This action is brought to recover damages from the defendants, who are said to be liable on three grounds. First, it was said that there was a duty on the defendants to light the wreck, and that there was a duty just as though there had been a contract made; but I think no such duty existed, and that the contention must fail. Then it was assumed that the defendants had committed an indictable offence in the channel of a navigable river; but it seems to me that the defendants did not do anything which amounted to an indictable offence. The liability of the owners of a sunken ship lying in the tide-way is that, if they keep possession of her, they must give notice where she has gone down. Then it was said that the defendants failed to give notice where the wreck of the *Douglas* was lying.

I incline to think that if the owners of a wreck abandon it, their liability ceases. The defendants, however, claim to be still owners of this wreck. It is to be noted that the owners themselves would not hear at once of the first collision, and it is for the plaintiffs to prove that there was negligence. The captain would, *prima facie*, be the person bound to act, and he does not seem to have been guilty of negligence. The mate further had a right to suppose the harbour-master would do what he promised. Therefore there was no negligence, and the judgment of the Admiralty Division cannot be supported. With regard to the two cases cited, it is to be observed they were decided on demurrer.

COTTON, L.J.—I think the evidence was improperly rejected, for it went to shew that the defendants had for the time abandoned the wreck. By the Re-

(1) 5 Com. B. Rep. 599; 17 Law J. Rep. C.P. 227.

(2) 10 Exch. Rep. 312; 23 Law J. Rep. Exch. 317.

The Douglas (App.), Adm.

moval of Wrecks Act, 1877, the harbour-master had power to put up lights, and I think he was bound to remove a dangerous obstruction. There need not be a new trial, as it appears from the deposition of the mate that the collision was reported to the harbour-master, and that the harbour-master made a communication to the mate. This exonerates the defendants, and as the plaintiffs cannot prove negligence against the defendants, this appeal must succeed.

Appeal allowed.

Solicitors—Crump & Son, for appellants; Gelatly, Son & Warton, for respondents.

PROBATE. }
1882. } CARPENTER v. THE SOLICITOR
July 18. } TO THE TREASURY.

Security—Receiver—Guarantee Society—Limited Liability—Paid-up Capital.

*The deed of settlement of a guarantee society, which was not registered under the Joint Stock Companies Acts, but which was established by a statute limiting the liability of the shareholders and enabling the society to sue or be sued in the name of the secretary or any director, and had for its business the becoming surety, in consideration of an annual premium, for the integrity of clerks, collectors, receivers and other persons in whom pecuniary trust should be reposed, provided for the insertion in every bond issued by the society of a condition that the capital, stock and funds of the society should alone be liable to answer claims in respect of the bond, and that no member of the society should be liable in respect thereof beyond the uncalled amount of his shares. The capital of the society consisted of 100,000*l.* in fully paid-up shares, represented by securities of the value of 124,000*l.**

The Court accepted a bond of the society, containing a clause in the terms provided for in the deed of settlement, as security for the due performance of the duties of a receiver in a probate action

The plaintiff in this action propounded the will of John Allen Stokes, who died at Streatham on the 31st of May, 1881.

On the 16th of May, 1882, the Court made an order for the appointment of an administrator *pendente lite* and a receiver. Edward Stimson was afterwards appointed such administrator and receiver, and tendered the Guarantee Society as his surety.

The Guarantee Society was established, by an Act, 5 & 6 Vict. c. lxiv. (Local and Personal), for the purpose of carrying on the business of becoming surety, in consideration of annual premiums, for the integrity of clerks, collectors, receivers and other persons of reputation approved of by the society, in whom pecuniary trust should be reposed.

The society was not registered under either of the Joint Stock Companies Acts, but was empowered by the Act to sue or be sued in the name of the secretary or of any director. The capital of the society consists of 100,000*l.* in paid-up shares, and is represented by securities of the value of 124,000*l.*

The deed of settlement of the society provides for the insertion in every bond issued by the society of the following condition: "Provided always and it is hereby agreed, that this bond is entered into by the said society on the condition that the capital, stock and funds, according to the deed of settlement of the said society, shall alone be liable to answer and make good all claims in respect of this bond, and that no director or proprietor of the said society shall in any manner be personally liable or subject to any claims or demands by reason of such bond beyond the amount remaining to be called up of his or her shares of such capital, stock or funds."

The Registrar refused to accept a bond containing the above-mentioned clause as security for the performance of the receiver's duties.

A. L. Smith, for the defendant, moved for an order directing the Registrar to accept the Guarantee Society's bond in the form tendered, as security for the due performance by Edward Stimson of the duties of receiver in the action.

He referred to *Colmore v. North* (1).

(1) 42 Law J. Rep. Chanc. 4.

Carpenter v. Solicitor to the Treasury, Prob.
Searle, for the plaintiff, consented.

THE PRESIDENT (SIR JAMES HANNEN).—
 I am satisfied with the security, which is
 better than that of a private person.

Solicitors—Fox and Page, for the plaintiff;
 Hare & Co., for the Solicitor to the Treasury.

PROBATE. }
 1882. } HOCKLEY AND OTHERS v. WYATT.
 July 27. }

Costs—Probate in Solemn Form—Opposition by Residuary Legatee of former Will—Notice under Rule 41.

A legatee under a former will has not the same right as a next-of-kin or executor of a former will to put an executor of a subsequent will upon proof in solemn form, and therefore he cannot protect himself against liability to be condemned in costs by giving notice under rule 41 that he only intends to cross-examine the witnesses produced in support of the will.

The plaintiffs propounded the will of Jane Platt Walton, who died on the 28th of December, 1881. The will was dated the 24th of December, 1881, and in it the plaintiffs were appointed executors. The defendant, who was one of the residuary legatees of a prior will of the deceased, dated the 22nd of December, 1881, pleaded that the will was not duly executed according to the statute; that the deceased was not of sound mind, memory and understanding; and that she did not know and approve of the contents of the will.

The defendant gave notice under rule 41 (1) of the Rules and Orders (July 30, 1862)

(1) Rule 41:—"In all cases the party opposing a will may, with his plea, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court."

that he only intended to cross-examine the witnesses produced in support of the will.

At the hearing, the learned President found in favour of the will.

J. G. Witt, for the plaintiffs, applied that the defendant might be condemned in costs. The notice given by the defendant under rule 41 (1) does not protect him from liability to be condemned in costs. According to the practice of the Prerogative Court the next-of-kin and the executor of a previous will have a right to put the executor of the will propounded upon proof in solemn form without being liable for costs, but this privilege has never been extended to a legatee under a previous will. He cited *Boston v. Fox* (2), *Leeman v. George & Rosser* (3) and *Williams on Executors* (4).

R. A. Bayford, for the defendant, contended that a legatee under a previous will was within the rule.

THE PRESIDENT (SIR JAMES HANNEN).—This question has been before me on previous occasions, but has not yet been the subject of judicial decision. I have now had my attention directed to the authorities upon the point; and it seems to me that, according to the practice of the Prerogative Court, by which I am bound, the privilege of putting an executor to proof in solemn form without liability to costs was not extended to a legatee under a previous will. I therefore hold that the notice given by the defendant affords him no protection. [His Lordship then, upon a review of the facts of the case, said that in the exercise of his discretion he should leave each party to pay his own costs.]

Solicitors—Adam Burn & Son, agents for Sharland & Hatten, Gravesend, for plaintiffs;
 T. Sismey, agent for Tolhurst, Lovell & Clinch, Gravesend, for defendant.

(2) 29 Law J. Rep. Prob. & M. 68.

(3) 37 Law J. Rep. Prob. & M. 13; Law Rep. 1 P. & D. 542.

(4) 8th ed., p. 344.

PROBATE. }
1882. } JONES v. JONES AND ANOTHER.
March 8. }

Probate Action—Parties—Citing to See Proceedings—Revocation of Probate—Real Estate—Assignee of Heir-at-Law—20 & 21 Vict. c. 77. s. 63.

In an action for revocation of the probate of a will which deals only with real estate, the Court will not allow the assignee of the interest of the heir-at-law of the testator to be cited under the Act 20 & 21 Vict. c. 77. s. 63.

Hannah Jones, widow, died at Llanfairnewlwl, Anglesey, on the 8th of April, 1876, having two days previously executed a will, whereby she devised a freehold farm to Owen Jones, who obtained probate of her will.

Owen Jones died on the 14th of July, 1879, having devised the said farm to his wife, Elizabeth Jones, who obtained probate of his will.

The present action was brought by John Jones, the heir-at-law and one of the next-of-kin of Hannah Jones, for revocation of the probate of her will, but he had assigned all his interest as heir-at-law of the testatrix to his brother, Robert Jones.

Searle, for the defendants, moved for leave to cite Robert Jones as a party interested in the real estate of the testatrix. Any person who would have a right to intervene, if the will dealt with personalty, is a proper party to be cited. The terms of the 20 & 21 Vict. c. 77. s. 63, are very wide.

Clement Lloyd, for the plaintiff.—Robert Jones is not within the Act 20 & 21 Vict. c. 77. s. 63.

THE PRESIDENT (SIR JAMES HANNEN).—I do not think that Robert Jones is a person whom there is any right to cite. He derives his interest from the plaintiff, John Jones, and his interest will stand or fall with that of the latter. I must reject the application with costs.

Solicitors—Radford & Frankland, agents for E. G. Roberts, Holyhead, for plaintiff; Bloxams & Ellison, agents for John Roberts, Bangor, for defendant.

[IN THE COURT OF APPEAL.]

ADMIRALTY. }
1881. } THE SKANDINAV.*
July 19. }

Ship and Shipping—Charter-party—Measurement—Custom.

By a charter-party it was agreed that "a ship should load a cargo, and proceed to a port in Great Britain, and deliver the same on being paid freight at and after the rate of 35s. per 180 English cubic feet taken on board, as per Gothenburg custom":—Held (reversing the decision of Sir R. PHILLIMORE), that the freight was to be ascertained by measuring the cargo according to the method used at Gothenburg, and not according to the method used at the port of discharge.

This was an appeal from the judgment of Sir R. Phillimore, reported 50 Law J. Rep. P., D. & A. p. 46, reversing the decision of the County Court Judge at Hull, in an action brought by the shipowner against the cargo-owners to recover 74l. 18s. 8d. for balance of freight. By charter-party made at Stockholm on the 13th of March, 1880, it was agreed that the *Skandinav* should proceed to a good and safe port in West-erwick's custom house district, and there load a full and complete cargo of props, and, being so loaded, should proceed to a safe port on the east coast of Great Britain, "and deliver the same on being paid freight at and after the rate of 35 shillings British sterling in full per 180 English cubic feet taken on board, as per Gothenburg custom." By the bill of lading the master bound himself to deliver the cargo of props "on safe arrival to order against an agreed freight, as per charter-party." The *Skandinav* arrived at the port of Werkeback, but the cargo was not measured before being shipped, the agent of the cargo-owners having refused to measure it, although requested to do so by the master. After the cargo had been shipped, the master telegraphed to the charterer to get a lump sum freight, to which the charterer replied: "Lump sum refused positively. I must submit to the measuring in Hull of the *Skandinav's* cargo." Accordingly, at

* *Coram* Jessel, M.R.; Brett, L.J., and Cotton, L.J.

The Skandinav (App.), Adm.

the end of the bill of lading, the master added the words, "Number of pieces, measure and quantity unknown, free from damage, cargo to be measured up at port of discharge at charterer's expense, according to his telegram." The cargo on arrival was measured by the custom house officials, according to the English measurement, which was most favourable to the cargo-owners, and the shipowner then brought his action against the cargo-owners for the balance of freight which was admittedly due if the cargo was to be measured according to the Gothenburg custom.

The County Court Judge decided in favour of the plaintiff, the shipowner, and gave judgment for him for 74*l.* 18*s.* 8*d.*, with costs. This decision was, on appeal, reversed by Sir R. Phillimore, who held that the cargo was to be paid for according to the quantity measured and delivered at the port of discharge, and not according to the quantity as ascertained by the custom of measurement used at Gothenburg, and gave judgment accordingly for the defendants (1).

The plaintiff appealed.

J. G. Witt, for the appellant.

Bucknill, for the respondents.

(1) 50 Law J., Rep. P., D. & A. 46.

JESSEL, M.R.—The Court must adopt a construction which has a meaning with reference to the facts of the case. The contract provides that the freight shall be "at the rate of 35*s.* per 180 English cubic feet taken on board, as per Gothenburg custom," and it has been proved that there is a particular custom or method of measuring props in use at Gothenburg. There is no other custom to which the words in the charter-party can apply but that. It was suggested on the part of the respondents that the custom mentioned had reference to the manner of loading the vessel, but there is no evidence at all of any such custom. The decision of the Court below must be reversed, and judgment entered for the appellant.

BRETT, L.J., and COTTON, L.J., concurred.

Appeal allowed, with costs.

Solicitors—C. A. Clulow, agent for A. M. Jackson, Hull, for appellant; Pritchard & Sons, agents for J. & T. W. Hearfield, Hull, for respondents.

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Acknowledgment. See WILL.

Administration—intestacy: insolvent estate: marriage settlement: grant to trustees: 20 & 21 Vict. c. 77. s. 73]—A died intestate. His estate was insolvent, the only asset of any value being an interest in a mortgage of property in Ceylon, which he had conveyed to the trustees of his marriage settlement, one of whom was B, his brother-in-law. A was a widower, and left five children, two of whom were of full age. The two adult children had renounced administration. The Court, on a renunciation by the eldest son, on behalf of the minor children, who had appointed him as their guardian for the purpose of the application, made a grant of administration to B under 20 & 21 Vict. c. 77. s. 73. *In the goods of Tyndall*, 12

— *intestacy: "special circumstances":* 20 & 21 Vict. c. 77. s. 73]—A, the wife of B, was entitled at the time of her death to a share in the residuary estate of P, subject to certain life interests. There had been no settlement upon the marriage, and A left no will. B died, without taking out letters of administration to A, and having made a will, which was proved by his daughter C, as sole executrix. He was at the time of his death indebted to the estate of P. A's share in the residuary estate of P having been paid into the Chancery Division, D, who was also entitled to a share in the residuary estate, was desirous of taking proceedings to render A's share liable for B's debt to the estate. C was cited to take out administration to the estate of A, but refused to do so.—The Court made a grant to D, under 20 & 21 Vict. c. 77. s. 73, of letters of administration of the personal estate of A. *In the goods of Wensley*, 21

Adultery. See SEPARATION DEED.

Alimony—gross or annual sum to be secured to wife by husband: order for weekly or monthly payments: alternative order: divorce act, 1857 (20 & 21 Vict. c. 85), s. 32: *amendment act, 1866* (29 Vict. c. 32), s. 1]—The direction in section 32 of the Divorce Act, 1857, to secure a gross or annual sum to the wife does not authorise an order for payment direct to the wife, but means that the sum is to be secured in such a way as to provide for the wife. Where the husband has property on which a gross annual sum can be secured, the Court has no power under the Amendment Act of 1866 to order a weekly or monthly payment, and it is immaterial that the property of the husband, and the husband himself, is out of the jurisdiction. Neither under section 32 of the Divorce Act nor the Amendment Act can the Court make an order in the alternative, directing a weekly or monthly payment in the event of failure to secure a gross sum. *Medley v. Medley* (App.), 74

— See MAINTENANCE; SEPARATION DEED SETTLEMENTS.

Appeal. See WRECK COMMISSIONER.

Arrest. See SHIP.

Assignee. See PROBATE ACTION.

Attachment. See COSTS.

Board of Trade. See WRECK COMMISSIONER.

Bottomry Bond—goods on board foreign ship: communication: maritime law and law of the flag]—The master of a foreign ship has power to bind the owner of cargo put on board his

ship by his bottomry bond, provided that it has been duly executed according to the law of the ship's flag. The rule of law, that the cargo is not bound by a bottomry bond executed by the master without previous communication with the cargo owners, will not be enforced where it is shewn that, by the law of the ship's flag, non-communication does not invalidate the bond. Judgment of SIR R. PHILLIMORE (*Ante*, p. 7) reversed. *The Gaetano e Maria* (App), 67

Celebration of marriage—British territory: Roman Catholic Church—A marriage celebrated between British subjects according to the rites of the Roman Catholic Church in a country subject to British dominion, but where there is no Established Church, is valid. *James v. James*, 24

Charter-party. See SHIP AND SHIPPING.

Collision—compulsory pilotage: foreign vessel: 6 Geo. 4. c. 123. s. 59: order in council, 18th of May, 1854: 24 & 25 Vict. c. 47. ss. 10, 11 and 14—Pilotage is compulsory in the Thames on foreign vessels carrying passengers and bound for a port between Boulogne and the Baltic, and such vessels are not exempt from compulsory pilotage by virtue of the order in Council of the 18th of May, 1854, which order enlarges the operation of 6 Geo. 4. c. 123. s. 59, in regard only to British vessels. A pilotage rate is not a due within the meaning of 24 & 25 Vict. c. 47, and therefore is not abolished by that Act. *The Vesta*, 25

— **damage by: compulsory pilotage: Suez Canal regulations**—By article 4 of the Regulations for the Navigation of the Suez Canal every ship above 100 tons is bound to take on board one of the company's pilots; but by the same article the responsibility for the management of the ship rests solely on the captain. A collision occurred in the canal between two steamers, the *W. H.* and *G. M.*, and was caused solely by the negligence of the pilot on board the *G. M.* In an action for damages against the *G. M.*,—*Held*, by the Court of Appeal (affirming the judgment of SIR R. PHILLIMORE, *Ante*, p. 17), that the owners of the *G. M.* were not exempt from liability on the ground of compulsory pilotage. *The Guy Mannering* (App.), 57

— **damage by: wreck: liability of owner: removal of wrecks act, 1877** (40 & 41 Vict. c. 16), s. 4: *evidence*—A steamship was wrecked and sunk in mid-channel in the Thames by a collision, in which she was at fault. One of her officers sent a message by the captain of a tug to inform the harbour-master of the

wrecking of the ship, and the harbour-master in reply said he would send and see to the wreck. He did not do so, and soon afterwards the ship of the plaintiffs' came into collision in the dark with the wreck. Evidence of what passed between the officers of the defendants' ship and the harbour-master was tendered and rejected, and the defendants were held liable to the plaintiffs in an action for damages:—*Held* (reversing the judgment of SIR R. PHILLIMORE, *Ante*, p. 55), that the evidence tendered ought to have been admitted, that there was no evidence of negligence on the part of the defendants, and that they were not liable. *The Douglas* (App.), 89

— **inevitable accident: regulation for preventing collisions at sea, art. 6: 36 & 37 Vict. c. 85. s. 17: costs**—Where a collision occurred during a gale of extraordinary violence, and a ship, being driven from her moorings, was unable to put up her side lights, — *Held*, that the collision was the result of an inevitable accident, and that the circumstances made a departure from the regulations necessary. But the suit, under the circumstances, was dismissed without costs. *The Buckhurst*, 10

— See DAMAGE; PILOTAGE.

Conflict of Laws. See BOTTOMRY BOND.

Construction. See WILL.

Co-respondent—dispensing with: adultery: persons unknown—If a husband's petition for a dissolution of marriage alleges adultery with A and B, and also with divers persons unknown, leave must be obtained to dispense with making such unknown persons co-respondents. *Penky v. Penky*, 21

Costs—attachment of debt: receiver: judicature act, 1873 (36 & 37 Vict. c. 66), s. 25. sub-s. 8] —Where a respondent in a divorce suit had failed to obey an order for payment of costs, the Court granted an order *nisi* attaching a debt due to the respondent, and also an order *nisi* for a receiver. *Whittaker v. Whittaker*, 80

— **probate in solemn form: opposition by residuary legatee of former will: notice under rule 41**—A legatee under a former will has not the same right as a next-of-kin or executor of a former will to put an executor of a subsequent will upon proof in solemn form, and therefore he cannot protect himself against liability to be condemned in costs by giving notice under rule 41 that he only in-

tends to cross-examine the witnesses produced in support of the will. *Hockley v. Wyatt*, p. 92

— *wife's: divorce: practice*—Where a decree nisi is made upon a husband's petition for divorce, he must nevertheless pay all the costs properly incurred by the wife in defending herself against the charges brought against her. *Robertson v. Robertson* (App.), 5

— See COLLISION; PRACTICE; SETTLEMENTS.

County Courts. See JURISDICTION.

Custom. See SHIP AND SHIPPING.

Damage. See COLLISION; LIENS; PRACTICE.

Delay—*judicial separation: dissolution of marriage*—A husband obtained a decree for a judicial separation, with damages against the co-respondent. He did not seek a dissolution of the marriage, since he hoped that his wife would return to him. More than three years afterwards he filed a petition for a dissolution of his marriage on the ground of his wife's adultery with the same co-respondent. The Court dismissed the petition on the ground of unreasonable delay. *Mason v. Mason*, 88

Derelict. See SALVAGE.

Desertion—*agreement to live separate*—The petitioner, previous to his marriage, had persuaded his wife to sign an agreement that they should not live together, and they never did so. A month after the marriage the wife was delivered of a child of which the petitioner was the father, and towards the support of which he paid her half-a-crown a week for several years. He afterwards discovered that his wife was living in adultery with another man, and he thereupon discontinued the allowance and commenced a suit for dissolution of the marriage:—*Held*, that the petitioner had been guilty of desertion, and was not entitled to relief. *Dagg v. Dagg*, 19

— *divorce: conviction of wife for felony*—A wife who had before her marriage been a domestic servant was, within a month after the marriage, sentenced to six months' imprisonment for larceny. Upon the expiration of her sentence she returned to domestic service, and she afterwards requested her husband to resume cohabitation, but he refused

to do so, on account of her conviction. Two years afterwards he discovered that she was living in adultery, and he then commenced a suit for a dissolution of marriage:—*Held*, that the petitioner had not been guilty of desertion conducing to his wife's adultery. *Williamson v. Williamson*, 54

Semble that the conviction of a wife for a criminal offence will not justify her husband in refusing to cohabit with her, and that, if his refusal to do so conduces to her adultery, he will not be entitled to any relief. *Ibid*.

Dissolution of Marriage. See DELAY.

Divorce. See DESERTION; SETTLEMENTS.

Evidence. See DAMAGE.

Executor. See WILL.

Flag, Law of the. See BOTTOMRY BOND.

Freight. See SHIP AND SHIPPING.

Guarantee Society. See SECURITY.

Heir-at-Law. See PROBATE ACTION.

Impotence. See NULLITY.

Intestacy. See ADMINISTRATION.

Judicial Separation. See DELAY.

Jurisdiction—*admiralty: county courts and City of London court: 32 & 33 Vict. c. 51. s. 2: damage to cargo: shipowner domiciled in England or Wales*—The County Courts and the City of London Court have jurisdiction under the County Courts (Admiralty Jurisdiction) Amendment Act, 1869, over a claim for damage to goods shipped on a vessel of which the owner is domiciled in England. Such a claim is one arising out of an agreement made in relation to the carriage of goods in a ship. *The Rona*, 65

Justice of the Peace. See SALVAGE.

Licence. See MARRIAGE.

Lien. See SHIP AND SHIPPING.

Lien, Priority of—*damage: wages*—The owners of a vessel who have recovered judgment against another ship in an action for damage

by collision have a prior right against the proceeds of such ship to seamen who have recovered judgment against the same ship for wages earned before and after the collision. *The Elin*, 77

Lis Pendens. See SETTLEMENTS.

Maintenance—*permanent: divorce: variation of order: weekly payments:* 20 & 21 Vict. c. 85. s. 32: 29 Vict. c. 32. s. 1]—An order for permanent maintenance may, under the 29 Vict. c. 32. s. 1, provide for the payments being made monthly or weekly, whatever the amount of the allowance, and may be from time to time varied by the Court. *Jardine v. Jardine*, 4

— See ALIMONY; SEPARATION.

Maritime Law. See BOTTOMRY BOND.

Marriage—*licence: misdescription*]—A marriage by licence is not invalidated through the husband having been, by mistake, described in the licence as having two additional Christian names. *Haswell v. Haswell*, 15

— See CELEBRATION.

Measurement. See SHIP AND SHIPPING.

Mistake. See WILL.

Notice. See SHIP AND SHIPPING.

Nullity of marriage: impotence: possibility of cure]—In a husband's suit for a declaration of nullity of marriage, on the ground of his wife's incapacity, it appeared that the parties had cohabited irregularly during two years and eight months after the marriage, but that the respondent had always refused to allow the petitioner to attempt to consummate the marriage, alleging that she was not fit for it and had no sexual desire. The medical evidence shewed that sexual connection with the respondent was impossible, but that she might probably be cured by submitting to an operation which would involve very little risk to her life. She had refused to submit to any operation:—*Held*, that the petitioner was entitled to a decree of nullity of marriage. *L. v. W. (otherwise L.)*, 23

Particulars. See PRACTICE.

Parties. See PROBATE ACTION.

Petition—*settlements: absence of petitioner: signature by solicitor*]—A petition for variation

of settlements ought to be signed by the petitioner. Where, however, the petitioner was engaged on military service in India, the Court allowed the petition to be signed by the petitioner's solicitor. *Ross v. Ross*, 22

Pilotage, compulsory. See COLLISION.

Power. See WILL.

Practice—*costs: guilty wife: time for application:* 20 & 21 Vict. c. 85. s. 51: *divorce rules, rule 159*]—In a husband's suit for dissolution of marriage the petitioner was ordered by the Registrar to pay into Court, or give security for, a certain sum for the respondent's costs. No appeal was brought by the respondent on the ground of the insufficiency of the sum named, for which security was afterwards given. At the trial a decree *nisi* was granted, and the three co-respondents were condemned in costs. The Court made the usual order as to the wife's costs; no application for the allowance of additional costs being made on her behalf. After the decree had been made absolute the Court refused to order payment by the petitioner of the respondent's taxed costs beyond the amount secured. *Smith v. Smith*, 31

Observations upon the judgment of the Court of Appeal in *Robertson v. Robertson* (*Ante*, p. 5; Law Rep. 6 P. D. 119). *Ibid*.

— *particulars: alleged defective condition of ship: damage to cargo*]—In an action by the owners of cargo against the shipowners, for damage to the cargo caused by the alleged defective condition of the ship,—*Held* (reversing the decision of SIR R. PHILLIMORE, *Ante*, p. 22), that the defendants were entitled to particulars of the alleged defective condition of their ship. *The Rory* (App.), 73

The rule as to ordering particulars is the same in the Admiralty Division as in the Queen's Bench Division of the High Court. *Ibid*.

— *preliminary act: amendment*]—The Court will not usually allow any amendments to be made in the Preliminary Acts. *The Miranda*, 56

— *writ: order II. rules 3 and 4*]—A writ, *in personam*, issued for service within the jurisdiction, will not be set aside, though the defendant has been erroneously described therein as resident within the jurisdiction. *The Helenslea*, 16

— See COSTS; PETITION.

Preliminary Act. See PRACTICE.

Probate. See **WILL.**

Probate Action—parties: *citing to see proceedings: revocation of probate: real estate: assignee of heir-at-law:* 20 & 21 Vict. c. 77. s. 63]—In an action for revocation of the probate of a will which deals only with real estate, the Court will not allow the assignee of the interest of the heir-at-law of the testator to be cited under the 20 & 21 Vict. c. 77. s. 63. *Jones v. Jones*, 93

— See **COSTS.**

Receiver. See **COSTS; SECURITY.**

Residuary Legatee. See **COSTS.**

Residue. See **WILL.**

Revival. See **SEPARATION, DEED OF.**

Roman Catholic Priest. See **CELEBRATION.**

Salvage—derelict]—A derelict ship was boarded by a party of five men, who navigated her for four days and then signalled a passing ship for help. On their signal being answered they abandoned the derelict ship and took refuge on board the other ship. The latter ship put some hands on board the derelict and towed and stood by her until further help was obtained and she was got into harbour:—*Held*, that no salvage was earned by the party who first boarded the derelict. *The Killeena*, 11

— “ship”: *jurisdiction of justices: merchant shipping act, 1854* (17 & 18 Vict. c. 104), ss. 2, 458 and 460: “ship or boat stranded or otherwise in distress on the shore of any sea or tidal water”]—A hopper used for dredging purposes, not fitted with oars or other means of propulsion, and generally moved by towing, is a “ship” within the meaning of the Merchant Shipping Act. Such a vessel, adrift about three miles from the Boston shore, with no one on board, is a “ship in distress on the shore of a sea or tidal water,” and the Justices have jurisdiction to award salvage to those who rescue her. Judgment of *SIR R. PHILLIMORE* (*Ante*, p. 20) reversed. *The Mac* (App.), 81

— See **SHIP AND SHIPPING.**

Security—receiver: guarantee society: limited liability: paid-up capital]—The deed of settlement of a guarantee society, which was not registered under the Joint Stock Com-

panies Acts, but which was established by a statute limiting the liability of the shareholders and enabling the society to sue or be sued in the name of the secretary or any director, and had for its business the becoming surety, in consideration of an annual premium, for the integrity of clerks, collectors, receivers and other persons in whom pecuniary trust should be reposed, provided for the insertion in every bond issued by the society of a condition that the capital, stock and funds of the society should alone be liable to answer claims in respect of the bond, and that no member of the society should be liable in respect thereof beyond the uncalled amount of his shares. The capital of the society consisted of 100,000*l.* in fully paid-up shares, represented by securities of the value of 124,000*l.* The Court accepted a bond of the society, containing a clause in the terms provided for in the deed of settlement, as security for the due performance of the duties of a receiver in a probate action. *Carpenter v. The Solicitor to the Treasury*, 91

Separation. See **DESERTION.**

Separation, Deed of—covenant not to sue for increased alimony: subsequent adultery of husband: suit for judicial separation: petition for permanent alimony: 20 & 21 Vict. c. 85. ss. 7 and 17]—By a deed of separation, executed in consequence of the adultery of the husband, of which the wife was cognisant, the wife agreed to accept a certain sum for maintenance, and the deed contained a covenant by her trustees that she should not, nor any one on her behalf, institute any proceeding “to compel her husband to allow her any maintenance or alimony except as aforesaid.” The husband regularly paid the maintenance, but subsequently again committed adultery with the same woman as before. The wife obtained a decree for judicial separation:—*Held*, that, having regard to the circumstances known to the wife at the time of the execution of the separation deed, the subsequent adultery of the husband was not such misconduct so affecting the position of the wife as to entitle her to repudiate her contract in the deed, and that she was, therefore, not entitled to any further sum by way of permanent alimony than the sum agreed to be accepted by the deed. There is no implied condition in separation deeds that both parties shall live chastely, and therefore the contract in the separation deed is unaffected by the subsequent misconduct of either party. *Gandy v. Gandy* (App.), 41

Seemle, there may, however, be misconduct so gross, or of so different a character from that in contemplation when the separation deed was executed, as to disentitle the guilty party to rely upon the deed. *Ibid.*

In the case of a judicial separation the Court

has not the same power of dealing with settlements, either ante-nuptial or post-nuptial, as in the case of a dissolution of marriage. *Ibid.*

Separation, Deed of (continued)—*cruelty: covenant not to sue: subsequent adultery: revival*—A husband and wife executed a deed of separation, which contained a covenant on the part of the wife that she would not, in any subsequent proceedings against her husband, avail herself of any of his previous acts. After the execution of the deed the husband was guilty of adultery, and the wife commenced a suit for a dissolution of the marriage:—*Held* (following *Gandy v. Gandy*, *Ante*, p. 41), that cruelty committed by the husband before the date of the deed of separation was not revived by his subsequent adultery, and that the wife was not entitled to relief in respect of such cruelty. *Rose v. Rose*, 79

— *permanent maintenance: dum casta clause: jurisdiction*—After a decree for a dissolution of marriage, on the ground of the husband's adultery and cruelty, the respondent was ordered to secure to the petitioner an annuity of 100*l.* per annum, and it was referred to one of the conveyancing counsel of the Chancery Division to prepare the necessary deed. After the deed had been prepared the respondent applied to the Court to insert a *dum casta* clause in the deed, but the Court refused the application, and the respondent executed the deed. The respondent afterwards moved for an order directing the deed to be delivered up to be cancelled, and the respondent to be released from his covenant, alleging that the petitioner had, since the execution of the deed, been living an unchaste life:—*Held*, that the Court had not jurisdiction to order the deed to be cancelled. *Bradley v. Bradley*, 87

Seem, that the application to cancel the deed could only be entertained by the Chancery Division. *Ibid.*

Settlements—divorce: settled property: power to deprive a guilty party of all interest under the settlements: 22 & 23 *Vict. c. 61. s. 5*, and 41 *Vict. c. 19. s. 3*—After a final decree for dissolution of marriage, the Court has a discretionary power, under the Matrimonial Causes Acts, 1859 and 1878, wide enough to exclude a guilty party, either partially or wholly, from the benefit of property settled upon the parties to the marriage. *Wigney v. Wigney* (App.), 60
A marriage was dissolved on the ground of the husband's adultery and cruelty. The whole of the settled property having been brought in by the wife, and there being no children of the marriage, the Court in the exercise of its discretionary power deprived the husband of all benefit under the settlement. Provision

was, however, made out of the settlement funds for debts contracted by the husband during the coverture. Decision of SIR JAMES HANNEN affirmed. *Ibid.*

— *variation of: mortgage by husband: solicitor: costs of divorce suit: lis pendens:* 22 & 23 *Vict. c. 61. s. 5*—Although the Court, in directing a variation of settlements after a decree dissolving a marriage, has power, under the 22 & 23 *Vict. c. 61. s. 5*, to make an order affecting the interests of third parties created before the date of the petition for variation of the settlements, the interests of mortgagees created before that date will, as a general rule, be respected. *Wigney v. Wigney*, 84

An ante-nuptial settlement of a sum of 40,000*l.* gave the husband a first life interest in 15,000*l.*, and a second life interest in the remainder of the fund. All the settled property was derived from the wife, the husband having no property of his own, except a military pension of 120*l.* per annum. There was no issue of the marriage. The wife obtained a decree *nisi* for a dissolution of her marriage on the ground of her husband's adultery and cruelty. Shortly before the decree *nisi* was pronounced, the respondent, who had previously borrowed 4,200*l.* upon the security of his life interest under the settlement, and of certain policies of insurance upon his own life, executed a further mortgage of his life interest in favour of his solicitors, to secure their costs in the divorce suit. After the decree *nisi* had been made absolute, the petitioner presented a petition for variation of the settlement. *Ibid.*

The Court, although it had ordered that the respondent's interest in the settled property should be extinguished, refused to make an order declaring that the interests of the respondent's solicitors under the second mortgage was thereby determined. *Ibid.*

— See PETITION.

Ship and Shipping—abandonment of: salvage: right of cargo-owner to release cargo after arrest: right of shipowner to freight—A ship, destined for R., with a cargo, was abandoned as a derelict, brought by salvors into an intermediate port and there arrested on behalf of the salvors. On a motion by the cargo-owners to release the cargo at that port, on giving bail,—*Held* (by the Court of Appeal, affirming the judgment of SIR R. PHILLIMORE), that the owners were entitled to have the cargo released, and were not liable to pay any freight to the shipowner, for that the abandonment of the ship as a derelict entitled the owner of the cargo to treat the contract of affreightment as being at an end. *The Cito* (App.), 1

— *charter-party: measurement: custom*]

By a charter-party it was agreed that "a ship should load a cargo, and proceed to a port in Great Britain, and deliver the same on being paid freight at and after the rate of 35s. per 180 English cubic feet taken on board, as per Gothenburg custom":—*Held*, that the freight was to be ascertained by measuring the cargo according to the method used at Gothenburg, and not according to the method used at the port of discharge. *The Shandinav* (App.), 93

— *general ship: lien for freight: notice of charter-party*]

When a person without notice of any charter-party between the shipowner and the charterer ships goods on board a vessel which is advertised as a general ship by the charterer only, such goods are not subject to a lien which may be reserved by the charter-party to the shipowner in respect of overdue freight; and under such circumstances an intending shipper is not bound to enquire as to the existence of a charter-party. *The Stornoway*, 27

Peck v. Larsen (40 Law J. Rep. Chanc. 763; Law Rep. 12 Eq. 378) approved. *Ibid*.

— See JURISDICTION; SALVAGE.

Signature. See WILL.

Solicitor. See SETTLEMENTS.

Suez Canal. See COLLISION; PILOTAGE.

Tidal Water. See SALVAGE.

Wages. See LIEN.

Wife. See COSTS; PRACTICE.

Will—acknowledgment of: testator's signature not seen by attesting witnesses: probate: wills act, 1837 (1 Vict. c. 26), s. 9]—In order to constitute a due acknowledgment of the signature of a will under section 9 of the Wills Act, 1837, it is necessary that the attesting witnesses should actually see the signature of the testator at the time of the acknowledgment. *Blake v. Blake* (App.), 36

And *semble* that though the testator should say "This is my will," or even "My signature is under there," and the witnesses do not actually see the signature, there would be no sufficient acknowledgment. *Ibid*.

Hudson v. Parker (3 Robert. 25) approved. *Gwillim v. Gwillim* (3 Sw. & Tr. 200) and *Beckett v. Howe* (39 Law J. Rep. Prob. & M. 1; Law Rep. 2 P. & D. 1) dissented from. *Ibid*.

— *construction: life estate: gift to the two and "to the survivor for her sole use and*

benefit during her or their natural lifetime": intestacy as to reversion]

The testatrix bequeathed the whole of her property to her two sisters, and her will concluded with the following words: "And in the case of the demise of either the said A. C. or the said J. C., I do hereby bequeath the same and all and every portion of the same property to the survivor for her sole use and benefit during her or their natural lifetime." The testatrix named no executors and no residuary legatee:—*Held*, that the two sisters of the testatrix took only a life estate, and that there was an intestacy as to the reversion. *Watson v. Watson*, 13

— *construction: residuary gift: "residue of money"*]

The testator directed that, after payment of his debts, the "residue of money" should be handed to his sister, "except such things as the undermentioned," which articles he gave to other persons:—*Held*, that there was a gift of the residue to the testator's sister. *In the goods of White*, 40

— *probate: foreign subject: execution abroad in accordance with English law: 24 & 25 Vict. c. 114. s. 1; 33 & 34 Vict. c. 14. s. 2]*

A will executed abroad by an alien, in accordance with the requirements of English law, is not entitled to probate in this country under either the 24 & 25 Vict. c. 114. s. 1, or the 33 & 34 Vict. c. 14. s. 2. *In the goods of Von Buseck*, 9

— *probate: married woman: power of appointment: exercise by deed: conveyance to separate use: personal estate: arrears of rent: appointment of executor*]

The appointment of an executor is sufficient to entitle a will to probate, even if it disposes only of real estate. *Brownrigg v. Pike*, 29

Arrears of rent of separate property, accruing due in the lifetime of a testatrix, as well as such of the apportioned parts of the rents accruing due after her death as are attributable to the time preceding her death, form part of her separate personal estate, and are therefore capable of being disposed of by her. *Ibid*.

Real property was devised to trustees upon trust for such intents and purposes and in such manner and form as A by any deed or deeds duly executed, or by her last will and testament should appoint, whether covert or sole. A, being then a married woman, by a deed in execution of the power of appointment, conveyed the same property to trustees upon trust for herself, her heirs and assigns, for her sole and separate use, and directed that the property should not be sold, but should remain and be dealt with and descend as real estate. A afterwards executed a will, by which she gave and devised all her real

estate which she had power to dispose of to her husband for life, and after his death she devised portions of the estate to several persons, and the residue to B, upon trust to pay certain legacies. She empowered her executor to lay out a sum not exceeding 200*l.* upon a memorial window, and gave the residue in trust to be divided equally between B and C; and after revoking all other wills, appointed B as her executor. A was at the time of her death entitled to arrears of rent of real estate then due, and to apportioned parts of rent then accruing; but she was not possessed of or entitled to any other personal estate:—*Held*, that A's will was entitled to probate. *Ibid.*

Will (continued)—mistake: insertion of word without knowledge of testator: omission from probate—Where a word is proved to have been inserted in a will without the knowledge and authority of the testator, it will be omitted from the probate. A, being possessed of four hundred shares in a certain company, instructed his solicitor to prepare his will, and directed that all his shares in the company should be bequeathed to his four nephews. Through inadvertence the will was so drawn

as to purport to bequeath only forty shares to the four nephews. The will was not read over to the testator before execution, and he never knew that the word "forty" had been inserted. The Court granted probate of the will, omitting the word "forty" wherever it occurred. *Morrell v. Morrell*, 49

Fulton v. Andrew (44 Law J. Rep. Prob. & M. 17; Law Rep. 7 H.L. Cas. 448) followed. *Ibid.*

Words—"Residue of money," 40

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Wreck. See COLLISION.

Wreck Commissioner—board of trade enquiry: right of appeal by owner: 42 & 43 Vict. c. 72 s. 2—No right of appeal is given by 42 & 43 Vict. c. 72. s. 2, to the owner of a ship from the decision of the Wreck Commissioner upon an investigation into a shipping casualty *The Golden Sea*, 64

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THE
LAW JOURNAL REPORTS

FOR
THE YEAR 1882:

CASES
DECIDED BY THE
JUDICIAL COMMITTEE AND THE LORDS OF
Her Majesty's Privy Council,

REPORTED BY
EDWARD BULLOCK, Esq., BARRISTER-AT-LAW.

MICHAELMAS 1881 to MICHAELMAS 1882.

PRIVY COUNCIL, VOL. LI.



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MDCCCLXXXII.

CASES ARGUED AND DETERMINED

IN THE COURT OF

THE JUDICIAL COMMITTEE AND THE LORDS OF

Her Majesty's Privy Council.

MICHAELMAS 1881 TO MICHAELMAS 1882.

45 *Victoria*.

1881. { ERNEST CHARLES ELLIOT (*ap-*
Nov. 10. { *pellant*) v. WILLIAM TUR-
QUAND (*respondent*).

Jamaica—Bankruptcy Act, 1869, s. 39
—*Construction—Mutual Debts and Credits*
—*Notice of Bankruptcy—Title of Trustee*
—*Date of.*

Although the title of a trustee in bankruptcy to the property of the bankrupt relates back to the act of bankruptcy, yet, when there have been mutual debts and credits the title of the trustee to a credit does not accrue till the holder of such credit has notice of the act of bankruptcy.

The appellant, the agent of a West Indian estate, between whom and the owners were mutual debts and credits, was employed by the owners to sell their estate, to receive the purchase-money and to place it to their credit. The estate was sold, and the purchase-money was received by the appellant and placed by him to the credit of the owners, who were indebted to the appellant at the time in a larger amount. Before the money was so received by the appellant, the owners, without the knowledge of the appellant, had committed an act of bankruptcy:—Held, that the appellant was entitled to set off the purchase-money in account with the bankrupt's trustee.

This was an appeal from a judgment of the Supreme Court of Judicature of Jamaica, discharging a rule *nisi* for setting

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aside a judgment entered for the respondent in an action brought by him, as trustee of Cottam, Mortan & Co., against the appellant to recover the sum of 560*l.* and interest, as money received by the appellant to the use of the respondent, on the ground that the appellant had no right to set off or appropriate the 560*l.* against a larger debt due by the bankrupts to him, either under the 39th, 94th, or 95th sections of the Bankruptcy Act, 1869, because the authority of the appellant to receive the 560*l.* had been determined by the act of bankruptcy.

For some years previous and up to the 6th of September, 1878, the appellant, who resided in Jamaica, had had mutual credits, debts and dealings with the firm of Messrs. Cottam, Mortan & Co., West India merchants, in London, who were also land-owners in Jamaica, and who had acted as his agents in England for the sale of produce consigned by him to them, and for whom he had also acted as procurator attorney and general agent in connection with their properties and estates in Jamaica, the management and financing thereof, the sale thereof and the produce thereof, and the payment and receipt of moneys for them and on their behalf. By the course of dealing between them, moneys received by the appellant from persons indebted to them, or for the proceeds of properties or estates sold by or on their behalf, were carried to their credit in a general

B

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account, to which were debited moneys advanced or disbursed by the appellant, such advances being frequently covered by bills of exchange drawn by him upon them in London and sold to or discounted by the Colonial Bank in Jamaica, the proceeds of such bills of exchange being placed to their credit in such general account.

The appellant had also acted as the agent of the bankrupts in respect of a certain estate known as the Savoy Estate in Jamaica, and as such agent he sold the estate on their behalf to Christopher Howe MacCormack in consideration of the sum of 1,460*l.*, the agreed purchase price thereof. The stock on the said estate was also sold and delivered by him as such agent to the said Christopher Howe MacCormack, in consideration of the further sum of 600*l.*, the agreed purchase price thereof. The purchase-money was to be payable in three instalments of 1,000*l.*, 500*l.* and 500*l.*, the first being payable in cash, the two others at deferred dates respectively, with interest thereon at six per centum per annum.

The appellant was authorised by the bankrupts to receive the purchase-money of 2,000*l.* as and when payable, and he accordingly before the bankruptcy received the 1,000*l.* instalment in cash, which sum, in accordance with the said course of dealing, was placed by him to their credit in account in reduction of the amount then owing to the appellant by them. The account of the appellant crediting the firm with this instalment of 1,000*l.* was duly acknowledged by them before the bankruptcy.

The second instalment of 500*l.* with 60*l.* interest became due on the 7th of August, 1878, but was not paid by the said Christopher Howe MacCormack until the 26th of August, when it was paid by him to the appellant, as agent of Cottam, Mortan & Co., and received by the appellant, by virtue of the previous authority from Cottam, Mortan & Co. Upon receiving this 560*l.* the appellant appropriated the same in reduction of the amount owing to him by Cottam, Mortan & Co., and gave credit for the amount in his general account with the firm. The appellant also, subsequently to such receipt and appropriation, drew a bill on Cottam,

Mortan & Co., which was discounted and dishonoured, and upon which he became and was liable.

On the 17th of August, 1878, Cottam, Mortan & Co. presented a petition for liquidation of their affairs by arrangement or composition with their creditors in the London Bankruptcy Court.

The appellant had no notice of the act of bankruptcy at the time of the receipt and appropriation by him of the said 560*l.*, nor, in fact, did he have such notice until the 21st of September, 1878.

At the time of the act of bankruptcy of Cottam, Mortan & Co., they were indebted to the appellant, in respect of their mutual credits, debts and dealings, in a sum far exceeding 560*l.*

On the 26th of September, 1878, the respondent was appointed trustee of the estate and effects of Cottam, Mortan & Co.

On the 12th of December, 1879, the respondent, as trustee of Cottam, Mortan & Co., commenced an action for the recovery of the 560*l.* from the appellant.

The declaration claimed 560*l.* as money had and received by the appellant for the use of the plaintiff as trustee of Cottam, Mortan & Co.'s estate, and also claimed the money as upon an account stated by the appellant in respect thereof.

The appellant pleaded, amongst other pleas, an authority from Cottam, Mortan & Co. before bankruptcy to the appellant to receive the sum of 560*l.*, and that without notice of any act of bankruptcy committed by them, the appellant had received such sum as their agent and not for the respondent but for them, and in due course of appropriation placed the same to their credit in account, and that after such credit the firm were still indebted to him. That prior to the bankruptcy, and without notice of any act of bankruptcy, the appellant and Cottam, Mortan & Co. had mutual debts, credits and dealings, and the appellant being thereunto authorised, received for their use the sum of 560*l.* and without notice of any act of bankruptcy placed the same to their credit in the account of their mutual dealings in respect of which after such credit the firm still remained indebted to appellant.

The respondent joined issue on these

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pleas, and replied that the authority to receive the sum had been determined before its receipt, and a further replication to the third plea that the agency of appellant had been determined before the money was placed to credit in the account of Cottam, Mortan & Co.

The action was tried at Kingston before the Chief Justice of the Supreme Court and a special jury. It was admitted that no revocation of authority or agency took place in fact or at all, unless by mere operation of law, and the facts above stated were either admitted or proved. The learned Judge put three questions to the jury, who, in answer thereto, found as follows:—

First, That Cottam, Mortan & Co. were at time of the act of bankruptcy on the 17th of August, indebted to the appellant upon their mutual accounts and dealings in a larger amount than the 560*l.* received by him. Secondly, That the appellant had not notice of any act of bankruptcy at the time of receipt and appropriation by him of the money. Thirdly, That the appellant's authority from Cottam, Mortan & Co. was determined at the time he received the money.

The jury, in giving the last finding, did so under the direction of the learned Judge because the authority was determined by operation of law on the 17th of August, the date of filing of the petition for liquidation.

The Judge directed the verdict and judgment to be entered on these findings for the respondent, for the amount claimed, reserving leave to the appellant to move to set the same aside, and the appellant thereupon moved and obtained an order to set aside the judgment and have judgment entered for the appellant.

This order was discharged with costs.

From this judgment the present appeal was brought.

W. Mackeson, Q.C., and Pollard, for the appellant.—The receipt by the appellant of the money, and his appropriation of it by placing it to credit in the general account of the bankrupts, was a dealing with them protected by sub-section 2, or sub-section 3, of section 94, or sub-section 1 of section 95 of the Bankruptcy Act, 1869. The authority of the appellant from the bank-

rupts was still existent in fact and law at the time of the receipt and appropriation of the money by the appellant. There was no revocation of either in fact, nor any revocation by operation of law by the mere commission. No property of the bankrupts vested in the respondent as the trustee in their liquidation proceedings until his appointment on the 26th of September, 1878. The money had then been received and placed by the appellant to credit of the bankrupts in the account of their mutual dealings, they being indebted to the appellant in a larger amount. The transaction falls within the sections of the Bankruptcy Act, 1869, 39, 94 or 95.

They referred to *Parker v. Smith* (1); *Rose v. Hart* (2), *Naoraji v. The Chartered Bank of India* (3) and *Ex parte Snowball* (4), *In re Waugh* (5), *Ex parte Jay* (6), *Ex parte Rabbidge* (7), *Ex parte Pillory* (8).

Rigby, Q.C., and Reid, for the respondent.—The appellant received the money for the use of the respondent, and had no right to retain it in respect of a debt due from the bankrupts. There was no contract or agreement between the bankrupts and the appellant, that the appellant should have any lien on the purchase-money of the estate in respect of the debt against which he seeks to set it off. The bankruptcy operated as a revocation of the authority of the appellant to deal with the money. The accounts are to be taken at the date of the act of bankruptcy, except in those cases where credits terminate in debts.

They referred to *Hawkins v. White* (9), *Pearson v. Graham* (10), *Young v. The Bank of Bengal* (11), *Ex parte Duignam* (12).

(1) 16 East, 382.

(2) 8 Taunt. 499.

(3) Law Rep. 3 C.P. 444.

(4) Ibid. 7 Ch. App. 534.

(5) 46 Law J. Rep. Bankr. 26; Law Rep. 4 Chanc. 524.

(6) Law Rep. 14 Chanc. 19.

(7) 48 Law J. Rep. Bankr. 15; Law Rep. 8 Ch. D. 371.

(8) 60 Law J. Rep. Chanc. 691; Law Rep. 17 Ch. D. 653.

(9) 10 B. & C. 217.

(10) 6 Ad. & E. 899.

(11) 1 Moo. P.C. 150.

(12) 40 Law J. Rep. Bankr. 68; Law Rep. 6 Chanc. 605.

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SIR MONTAGUE SMITH delivered the judgment of their Lordships (13):—

This appeal arises in an action brought by the respondent, the trustee in bankruptcy of Messrs. Cottam, Mortan & Co., West India merchants, to recover from the appellant, who was their agent in Jamaica, the sum of 560*l.* which was paid to him, by a person of the name of Mac Cormack, as an instalment of the purchase-money of the Savoy estate in Jamaica. The defence to the action rests on a claim to set off against this sum of 560*l.* a larger amount due to the appellant (the defendant) from the bankrupts, and the question in the appeal arises on that claim.

The facts relating to the general course of dealing between the parties are shortly stated by the Chief Justice, who tried the action. His statement of them is this: "For several years previous to the bankruptcy the defendant had acted as the agent of Cottam, Mortan & Co. in respect of Savoy and Yarmouth estates, and also of their shipping and general business. He financed the estates, consigning the produce to the firm in London, and drawing on them for the expenses of management by means of bills which were discounted by the Colonial Bank in this island. As of the 9th of May, 1878, the defendant was in credit on account of Savoy in a small balance of 29*l.* 2*s.* 9*d.* As of the 30th of June of the same year, he was apparently in debt on account of Yarmouth in the sum of 73*l.* 3*s.* 3*d.*, but this included three bills drawn by him on and accepted by the firm of 200*l.* each, which were subsequently protested for non-payment, amounting in all to 600*l.*, and for which he is liable to the bank, who are the holders. There is also a balance due to him, exclusive of the bills, for disbursements on account of the subsequent working of the estate (which is now in the Encumbered Estates Court) to the 6th of September, amounting, after deducting the 73*l.* 3*s.* 3*d.* and a credit of 30*l.* for logwood, to about 179*l.* Upon the general account the defendant appears to be a creditor to the extent of 400*l.*, of which he states that he has had to take up one

bill for 200*l.*, and that on another for the like amount he is liable to the bank."

It appears from the course of business thus described that the defendant and the bankrupts had mutual dealings with and trusted each other. They trusted each other with credits which were likely to terminate, and in fact did terminate, in debts. Accounts were kept and rendered in the manner which is usual between West India merchants having estates in the West Indies, and their agents who manage those estates. The defendant advanced moneys, made disbursements, and became liable on bills for the bankrupts. It appears that the bankrupts at the time of the bankruptcy were indebted to the defendant upon the accounts both general and special, taking them together, in a sum far exceeding the 560*l.* Some of the items of the accounts were actual debts, others were credits clearly of a nature within the 39th section of the Bankruptcy Act, which must and did end in debts; and it is not questioned that those debts were incurred by, and those credits given to the bankrupts, before the act of bankruptcy.

The facts relating to the particular sum in dispute may be shortly stated. The defendant was entrusted by the bankrupts with the sale of the Savoy estate. He was so employed, no doubt, as being their general agent in the island. The sale appears to have been completed on the 1st of October, 1877, by a conveyance of that date from Mr. Lambert, one of the firm, to Mr. MacCormack. On the back of the deed is found a receipt for the purchase-money expressed in the deed, namely, 1,460*l.* The receipt is signed by Lambert. From an expression in a letter of one of the bankrupts it may be gathered that the deed was executed as an escrow. Although the facts are not clearly stated in the evidence, it appears that, besides the estate, stock to the value of 600*l.* was at the same time sold by the defendant on behalf of the bankrupts to MacCormack. An arrangement was made that 1,000*l.*, part of the purchase-money of the estate and stock, should be paid at once, and the remainder by two instalments of 500*l.* at intervals of a year. The first of these instalments, which, with interest at six

(13) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobhouse.

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per cent., was paid by MacCormack to the defendant, is the subject of this action.

On the 17th of August, 1878, the bankrupts in England filed a petition for liquidation by arrangement in bankruptcy. Their creditors met, and the plaintiff was appointed trustee; his appointment bearing date on the 26th of September, 1878, at which time his title to the property of the bankrupts actually accrued. The payment of the 560*l.* was made to the defendant by MacCormack on the 26th of August, 1878, after the filing of the petition for liquidation, which was undoubtedly an act of bankruptcy, but before the 26th of September, when the trustee was appointed, and the estate of the bankrupts became vested in him.

The general result of the evidence given at the trial appears in the facts which have been already stated. The learned Judge put three questions to the jury. The first was: "At the time of the act of bankruptcy were Cottam, Mortan & Co. indebted to the defendant upon their mutual accounts and dealings in a larger amount than 560*l.* received by him?" The jury found that they were. There is, therefore, as already stated, no question that the bankrupts at the time of the act of bankruptcy were indebted to the defendant in a larger amount than the 560*l.* The second question was: "Had the defendant, at the time he received the money, notice of an act of bankruptcy committed by them?" The answer was, "He had not." That also must be taken as conclusively found by the jury. The third question was: "At the time he received the money was the defendant's authority from Cottam, Mortan & Co. determined?" and the answer is, "It was." This question, it may be observed, assumes that there was an authority given by the bankrupts to the defendant to receive the instalments of the purchase-money from the purchaser; and from the facts that have been already stated, and which appear at more length in the evidence, their Lordships have no difficulty whatever in coming to the conclusion that the defendant had authority from the bankrupts to receive the money and to place it to the mutual account existing between them.

With regard to the finding of the jury

that the authority was determined, it is plain that it was not a finding of any fact by them. It was merely the affirmance of a conclusion of law which had been drawn by the Chief Justice, and which he directed them to find as if it were a question of fact. The direction of the Judge upon that point, and the finding of the jury in conformity with it, afford the main ground upon which the Court held that the plaintiff was entitled to recover. The grounds upon which the Court so decided appear to be that the authority which had been given by the bankrupts to the defendant to receive the money was revoked and determined by the act of bankruptcy, that the title of the trustee had relation to that act, and that the defendant, therefore, could not avail himself of a set-off. Now at the time the defendant received the 560*l.* he became accountable to the bankrupts for it, and if the bankrupts had the next day brought an action against him to recover it he might undoubtedly have set off the larger debt which they owed him. The question is, whether he may not now do so against the trustee, notwithstanding the previous act of bankruptcy, it being found as a fact that at the time he received the money he had no notice of it. Their Lordships think that he may do so, and that the case falls within the 39th section of the Bankruptcy Act—the Act of 1869. The actual title of the trustee to the property of the bankrupt did not accrue until his appointment on the 26th of September; and though no doubt that title is for many purposes taken back by relation to the act of bankruptcy, the same statute which creates that artificial relation provides in effect that in certain cases the relation shall not take place. Amongst the cases for which it so provides is the class of cases where mutual dealings, mutual credits or mutual debts exist; and as to such cases the effect of relation appears, by the legislation regarding them, to be neutralised and destroyed. Section 39 is this: "Where there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, an account shall be taken of what is due from one party to the other in respect of such mutual dealings, and the

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sum due from the one party shall be set off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt in any case where he had at the time of giving credit to the bankrupt notice of an act of bankruptcy committed by such bankrupt and available against him for adjudication."

It is observable that no time is mentioned in this section at which the account is to be taken. It has been argued that the account is to be taken to the time of the act of bankruptcy and not later, except as regards credits previously given which may afterwards terminate in debts. But the section is not so confined. The object was, that where there are mutual accounts a secret act of bankruptcy should not stop the currency of those accounts. In some of the former statutes the words, "notwithstanding a previous act of bankruptcy" are inserted. Although these words do not occur in the present section, their Lordships think that enough appears in the section from which an implication, equivalent to them, arises. The proviso at the end is, "but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt in any case where he had at the time of giving credit to the bankrupt notice of an act of bankruptcy." The proviso says nothing with regard to credit given by the bankrupt to such person. The insertion of this proviso shews that the substantive part of the section cannot be read as referring only to mutual dealings and accounts prior to the act of bankruptcy, because if it had been intended that the account was to stop at the act of bankruptcy the proviso would be meaningless and an unnecessary addition to the section. By fair implication, therefore, it may be taken that the Legislature did not so intend. The existence of mutual dealings and accounts protects the credits and debts on each side from the operation of the act of bankruptcy, until notice of it. It is unnecessary for their Lordships to decide what is the precise period at which an account of this kind—namely, an account

of mutual dealings and transactions—is to stop. That must depend on the circumstances of each case and the nature of the credits; but their Lordships think that at least up to the time when the party who claims the benefit of the 39th clause has notice of an act of bankruptcy, the mutual account may and ought to be taken.

It is unnecessary, in the view their Lordships take of this case, to decide whether the authority to receive the purchase-money of the Savoy estate was a giving of credit by the bankrupts to the defendant within the meaning of the 39th clause. If the deed of conveyance had been entrusted to him for this purpose the case would be very like some of the instances referred to in *Ross v. Hart* (3). Their Lordships, however, do not find sufficient evidence of the deed having been handed over to him for that purpose. But authority was undoubtedly given to the defendant in the course of mutual dealings to receive the purchase-money and to place it to account; in fact, he had received the first 1,000*l.*, and given credit for it in an account sent to the bankrupts and acknowledged by them before the bankruptcy. When under the same authority he afterwards received the 560*l.* in question, it was no longer a credit, but a debt, due from him to the bankrupts, and, as a debt, it would properly form an item in the mutual account.

The Judges of the High Court, as already intimated, based their judgment mainly on the ground that the authority to receive the money was revoked by the act of bankruptcy. That point has been most elaborately argued at their Lordships' bar by the learned counsel for the respondent, but their Lordships are unable to assent to the view taken by the Court. Authorities which appertain to protected transactions are not in all cases revoked by an act of bankruptcy. If it were so, the protection given by the Act would in many cases be of no avail. Authorities given in the course of mutual dealings, and necessary to the continuance of those dealings, are, by implication, excepted from the rule that authorities are revoked by an act of bankruptcy. They continue and remain unrevoked by virtue of the provision which protects such dealings, in the same way as

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powers necessary to give effect to protected sales continue and remain unrevoked by an act of bankruptcy. If this were not so, in some cases of mutual credits the protection professed to be given would be illusory. In the case in the Common Pleas referred to in the argument—*Naorogi v. The Chartered Bank of India* (2)—which was argued and treated as if the estate was administered in bankruptcy, though the action was brought in the name of the trader himself, under a deed of inspectorship, the bills had been delivered by the trader, before the execution of that deed, to the Chartered Bank of India to collect. The amount of the bills was received by the bank after the deed. It was held that this delivery and the authority to collect constituted a credit within the rule in *Rose v. Hart* (2), and it was supported as a credit within the mutual credit clause of the then Bankruptcy Act. It was assumed in that case that the authority was a revocable one. If the view taken by the Court below is right, this authority would have been revoked before the bank received the amount of the bills, and the judgment which held the transaction to be within the mutual credit clause would be incorrect. Their Lordships, however, see no reason to doubt the soundness of that decision.

The subject of the revocation of general powers by an act of bankruptcy with reference to protected sales came before the Lords Justices in the case of *Ex parte Snowball* (4). Lord Justice Mellish, in giving the judgment of the Court in that case, said, "We are of opinion that though, no doubt, as a general rule, a power of attorney must be treated as revoked by an act of bankruptcy committed by the giver of the power as against the trustee under a subsequent bankruptcy, still, if, after the act of bankruptcy, but before the adjudication, property is conveyed under the power to a *bona fide* purchaser who has no notice of the act of bankruptcy, the purchaser may hold the property as against the trustee. It is obvious that a power of attorney is not revoked for all purposes by an act of bankruptcy committed by the giver of the power, because, if no adjudication follows, a sale under the power is binding on the giver himself; and whenever a sale

would be binding on a bankrupt, if no adjudication follows, it is binding on the trustee under a subsequent adjudication if the purchaser had no notice of an act of bankruptcy having been committed by the seller at the time of the sale." Their Lordships think that this principle applies to the authority in this case, a payment having been made in pursuance of it, which became a debt in a mutual account within the scope of the 39th section; the reasons which induced the Court to hold that the power was not revoked in the case referred to apply with equal force to the case of such a debt.

Their Lordships do not decide this case upon the ground that there was a credit before the act of bankruptcy which matured into a debt after it, but upon the grounds that the authority given by the bankrupts to the defendant to receive the money was unrevoked at the time he received it; that it was therefore a rightful payment to him; that being so received, it became a debt and an item in the account between him and the bankrupts before notice of any act of bankruptcy; and that he is entitled to set off against it, in the action brought by the assignees, the debt due from the bankrupt to him.

Their Lordships think it unnecessary to give any opinion upon the point whether the transaction is a disposition of property protected by the 95th section of the Act, sub-section 1. If the transaction had been an isolated one, they might have had to consider that point; but the sum in dispute being an item in a mutual account between the parties, they think the case falls within the 39th section.

Leave having been given by the learned Judge to the defendant to move to enter the verdict, their Lordships are of opinion that the verdict and judgment should be entered for the defendant. They could not advise this order, in the face of the verdict of the jury upon the third question, if it had really been a finding of fact; but it being a mere conclusion of law, which they were directed to find by the Judge, their Lordships do not think that it stands in the way of their advising the verdict to be entered according to what they consider to be the right conclusion of law from undisputed facts.

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Their Lordships will therefore humbly advise Her Majesty to reverse the judgment of the High Court discharging the rule, and in lieu thereof to order that the rule be made absolute to enter the verdict and judgment for the defendant with costs. The respondent must pay the costs of this appeal.

Solicitors—Freshfields & Williams, for appellant; Druces, Jackson & Attlee, for respondent.

1881. } *In re* THE SUTTON COLDFIELD
Nov. 15. } GRAMMAR SCHOOL.

Charity Commission—Endowed Schools Acts, 1869, 1873, 1874—Scheme—Finality of—Vested Interest.

The Endowed Schools Acts, 1869 and 1873, enable the Charity Commissioners to make schemes "from time to time" in respect of endowed schools:—Held, that as the commissioners may amend any scheme, no scheme is final.

Section 11 of the Act of 1869 preserves "the privileges or educational advantages to which a particular class of persons are entitled":—Held, that the word "entitled" means legal rights and not benefits enjoyed by permission or bounty.

This was an appeal from two schemes of the Charity Commissioners of England and Wales.

The appellants were the warden and society of the royal town of Sutton Coldfield, in the county of Warwick.

The first scheme was framed for the administration of the foundation known as the Grammar School in the royal town of Sutton Coldfield, in the county of Warwick.

The second, by the commissioners for apportioning and applying for educational purposes part of the endowment held by the body corporate known as the Warden and Society of the royal town of Sutton Coldfield.

The grammar school of Sutton Coldfield was founded and endowed by John Vesey, Bishop of Exeter, in 1540, for

the purpose of providing some learned layman to teach grammar and rhetoric in the parish of Sutton. The endowment was vested by the founder in the warden and society of the royal town of King's Sutton (the predecessors of the present corporation), but by a decree of the Court of Chancery in 1636, the administration of the grammar school was transferred to trustees.

In 1877, the respondents, acting in concert with the governing body of the grammar school and of the corporation respectively, prepared schemes, one for the administration of the grammar school, and the other for apportioning the endowment of the corporation between educational and other uses. The latter scheme apportioned the endowments of the corporation, and it provided for the transfer of 15,000*l.*, part of such endowment, for the purposes of the grammar school.

The respondents afterwards abandoned for the time so much of the scheme as related to the management of the grammar school, and limited the scheme to the transfer and application of the 15,000*l.*

Two petitions were presented to Her Majesty, praying Her Majesty to withhold her approval of these schemes.

The first of these petitions was presented by the governing body of the corporation; the second by the inhabitants of the town of Sutton Coldfield. The petitioners object to the schemes on the ground that, if the proposed transfer and application of the sum of 15,000*l.* was sanctioned, the corporation would be unable to continue to defray the cost of the elementary education of the poor of the parish of Sutton Coldfield, and the other benefits conferred on the poorer class of inhabitants under the charter of incorporation, and that the adoption of a school board for the parish, and the imposition of rates to meet the deficiency, would be rendered necessary.

Millar, Q.C., and *W. Barber*, for the petitioners.—These schemes do not affect to be final, and are therefore open to objection. The endowment of the corporation will, if the schemes are carried out, be diverted from the proper objects. The schemes do not define what parts of the endowment of the corporation are applicable to educational

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or to other purposes. The schemes do not preserve the educational interests of the inhabitants, who have, or ought to have, the advantages of the higher education of the grammar school.

Davy, Q.C., and *Romer*, for the respondents.—The Endowed Schools Act, 1869, expressly enables the Charity Commissioners from time to time to frame schemes. No scheme is final, and no objection can be made on that account. The commissioners have power to amend or alter any scheme. The inhabitants of the town had no vested interest. They enjoyed certain benefits, but had no legal title to such advantages.

THE MASTER OF THE ROLLS delivered the judgment of their Lordships (1):—

This is an appeal of the Warden and Society of the royal town of Sutton Coldfield against two schemes of the Charity Commissioners, by which it is proposed to withdraw from that part of the funds of the corporation which were applicable to educational purposes, a sum equal to 15,000*l.*, to be applied as part of the foundation of the Sutton Coldfield Grammar School. There was a second appeal by the inhabitants of the locality; but that appeal, in conformity with a previous decision of their Lordships, could not be entertained, and may therefore be left out of consideration on the ground of the petitioners having no *locus standi* to present such an appeal.

With regard to the corporation, it is entitled to appeal as being the body whose corporate funds are to be withdrawn; and the appeal is presented, as their Lordships understand, in pursuance of the provisions of the 39th section of the Endowed Schools Act of 1869. They appeal, indeed, from two schemes, one being for the administration of Sutton Coldfield Grammar School, and the other for apportioning and applying for educational purposes part of the endowment of which the corporation are trustees. But they have no ground of appeal from the former of these schemes,

and are only bringing it into this discussion by way of shewing the impropriety of the application made by the latter scheme.

The grounds of appeal which have been argued here are two. The first ground was that the scheme in question was not a final scheme as required by the Act, and therefore was not within the scope or terms of the Act.

Now that depends on the wording of the scheme. The objection cannot be quite understood without looking at what the scheme is. The scheme says, "The part of this endowment applicable for educational purposes under this scheme shall, without prejudice to the application of any further part of this endowment for educational purposes under any future scheme, be such an amount," and so on; and the fourth section of the scheme is this: "The Charity Commissioners may from time to time, in the exercise of their ordinary jurisdiction, frame schemes for the alteration of any portions of this scheme: provided that such schemes be not inconsistent with anything contained in the Endowed Schools Acts, 1869, 1873 and 1874." The result of these declarations is this, that the scheme is without prejudice to a future scheme to be framed in accordance with the Acts of Parliament. Speaking not otherwise than respectfully of the Charity Commissioners, it appears to their Lordships that those words are surplusage. The Acts of Parliament enable the commissioners to make schemes from time to time. Nothing that could be done by the scheme could affect the statutory right to make future schemes. The words complained of cannot give the commissioners any power which the statute does not confer upon them, nor can the omission of those words take away any power. The present scheme cannot either now or hereafter prejudice any future scheme. That being so, of course the whole of the argument that it is not final as regards this scheme fails to the ground. There is nothing said in the scheme as to the application of any future sum, but merely that a future scheme may be made. In other words, it appears to their Lordships that it merely expresses that which the Act of Parliament has

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already enacted that a future scheme may be made.

It appears to their Lordships, therefore, that there is no want of finality in the scheme, and no valid objection to be raised to it on this ground.

The other objection was this: It was said that, having regard to the provisions of the 11th section of the Act of 1869, as amended by the 6th section of the Act of 1873, the scheme was open to objection for not preserving, or rather for abolishing or modifying, the privileges or educational advantages to which persons of a particular class of life were entitled. Now the way the argument was put was this: It was said, There are twelve elementary schools, as they may be called for the sake of distinction from the grammar school, and if this scheme is carried out, and so large a sum as 15,000*l.* is taken away from the funds of the corporation, there will not be sufficient income left to maintain these twelve schools in their present state of efficiency, and also to provide for the other charities which the corporation is liable to provide for, and for the other expenditure which it is under an obligation to make. The result, therefore, would be, that it would be necessary to make a school rate and to establish a school board while you are applying the funds to the support of a grammar school intended for the children of persons in a higher class of life than the poor persons whose children attend these elementary schools. Well, if that were so, and if it turned out that these persons were entitled to claim the benefit of the 11th section of the Act of 1869, modified in the way which has been mentioned, and that their existing educational advantages were wholly taken away or neglected in the new arrangements, of course the objection would prevail. But the first point to be considered is, what interests are protected by the Act. When you come to look at the 11th section it is plain that only what may be shortly termed vested interests are protected. It is, "Any privileges or educational advantages to which a particular class of persons"—or (as extended by the later Act) persons in a particular class of life—"are enti-

tled"—that is, have a legal title. A person is not entitled simply because he has enjoyed, by the permission or the bounty of another, some benefit either for a longer or shorter period; and, therefore, the question is, whether the persons in this particular class of life are entitled to these educational advantages. Now, when we investigate the title, we shall find that the original charter gave no title at all to these particular persons, or persons in this particular class of life. The title really depends on a scheme which was sanctioned by the Court of Chancery in the year 1825, and that title is limited to three schools—two elementary schools, strictly so called, for children of poor people who are to be educated and clothed, and a preparatory school for the like instruction. It is quite plain that the persons of the particular class of life there mentioned are poor people entitled to the benefit of these elementary schools; but the next thing to be considered is the extent of the title. When we look at the amount which was to be applied under that scheme, we shall find that it was the then surplus of the income of the corporation, over and above certain sums which they were then liable to expend, which was distributed; and the amount allotted for the elementary schools was 215*l.*, to be spent in education proper, and 429*l.* in clothing, making a total annual income of 644*l.* It appears by the accounts which were furnished that the average expenditure on these elementary schools has been 2,365*l.*—that is, on an average of three years. Therefore they had expended 1,721*l.* more than the 644*l.* to which a title is shewn. It was conceded in argument that you could not take the annual income of 15,000*l.* as being more than 500*l.* a year. The result, therefore, is, that not only has there been left by the commissioners all that these people are entitled to, but more than double what they are entitled to; and, consequently, the scheme is not obnoxious, in the opinion of their Lordships, to any objection on the ground that the provisions of the 11th section have not been carried out.

For these reasons it appears to their Lordships that the objections fail, and

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that the appeal ought to be dismissed without costs, the commissioners not asking for costs.

Solicitors — Iliffe, Russell & Co., agents for Holbeche & Addenbrooke, Sutton Coldfield, for appellants; Farrer, Ouvry, & Farrer, for respondents.

1881. { THE CITIZENS INSURANCE COM-
Nov. 26. { PANY v. WILLIAM PARSONS.
THE QUEEN INSURANCE COM-
PANY v. WILLIAM PARSONS.

Canada — Parliament of Canada — Powers of—Regulation of Trade and Commerce — Provincial Legislature — Civil Rights—Fire Insurance Contracts—The British North America Act, 1867, ss. 91 and 92—Construction—Fire Policy—Statutory Conditions — Variations of — Interim Receipt—Effect of.

The British North America Act, by section 91, provides that the Dominion Legislature may exclusively make laws in respect to "the regulation of trade and commerce." Section 92 provides that the Provincial Legislature may exclusively make laws in relation to "property and civil rights":—Held, that an Act of a Provincial Legislature dealing with fire insurance contracts was not a matter relating to "trade or commerce," but was a matter affecting "civil rights," and was therefore within the power of a Provincial Legislature.

An Act of a Provincial Legislature provides that certain conditions set out in the Act shall be deemed to be part of every fire insurance policy, and shall be printed on every policy, unless varied by other conditions to be indicated in conspicuous type and different coloured ink, and unless so indicated, no variation shall be binding on the insured. The respondent effected an insurance with the first-named appellants. The policy did not refer to the statutory conditions, but contained conditions not indicated by type or coloured ink:—Held, that the policy was subject to the statutory conditions, but not to the expressed conditions.

The respondent applied to the second appellants for an insurance against fire, and paid the premium, and received an "Interim" receipt, "subject to all the usual terms and conditions of this Company." Before a policy was issued the insurance became a claim:—Held, that this receipt not being a policy of insurance was not subject to the statutory conditions, but was a contract to accept a policy containing the terms and conditions usually inserted by the company, so far as the same were just and reasonable.

These were two appeals from two judgments of the Supreme Court of Canada.

The appellants in the first appeal were an insurance company, incorporated by an Act of the Parliament of Canada, carrying on business throughout the several provinces of the Dominion of Canada, including Ontario, under a licence in accordance with the provisions of 38 Vict. c. 20, and 40 Vict. c. 42. On the 4th of May, 1877, these appellants issued to the respondent a policy of insurance, whereby they agreed to insure a building owned by him, situated at Orangeville, in the province of Ontario, against loss or damage by fire not exceeding 2,500 dollars. The policy was made, subject to the following, amongst several other conditions, which conditions were endorsed upon it:—

"Conditions upon which this Policy is issued.

"The assured must give notice to this company of any other insurance effected on the same property, and have the same endorsed on this policy or otherwise acknowledged by the company in writing; and failure to give such notice shall void this policy.

"This policy is made and accepted under the conditions above-mentioned, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for."

By a statute passed by the Provincial Legislature of Ontario, 39 Vict. c. 24, it is provided as follows:—

Section 1. The conditions set forth in

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the schedule to this Act, shall, as against the insurers, be deemed to be part of every policy of fire insurance hereafter entered into or renewed, or otherwise in force in Ontario, with respect to any property therein, and shall be printed on every such policy with the heading "Statutory Conditions"; and if a company (or other insurer) desire to vary the said conditions, or to omit any of them or to add new conditions, there shall be added in conspicuous type, and in ink of different colour, words to the following effect:—

"Variations in Conditions.

"This policy is issued on the above statutory conditions, with the following variations and additions:—

"These variations are, by virtue of the Ontario Statute in that behalf, in force so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the company."

Section 2. Unless the same is distinctly indicated and set forth in the manner or to the effect aforesaid, no such variation, addition or omission shall be legal and binding on the insured; and no question shall be considered as to whether any such variation, addition or omission is, under the circumstances, just and reasonable, and on the contrary, the policy shall, as against the insurers, be subject to the statutory conditions only, unless the variations, additions or omissions are distinctly indicated and set forth in the manner or to the effect aforesaid.

Section 3. A decision of a Court or Judge under this Act shall be subject to review on appeal to the same extent as a decision by such Court or Judge in other cases.

The 8th and 9th statutory conditions were as follows:—

"8. The company is not liable for loss if there is any prior assurance in any other company, unless the company's assent thereto appears therein or is indorsed thereon, nor if any subsequent insurance is effected in any other company, unless and until the company assent thereto by writing signed by a duly authorised agent."

"9. In the event of any other insurance on the property herein described,

having been assented to as aforesaid, then this company shall, if such other insurance remain in force, on the happening of any loss or damage only be liable for the payment of a rateable proportion of such loss or damage without reference to the dates of the different policies."

At the time the policy was issued there was another insurance effected on the same property. No notice of this policy was given to the appellants, nor did any assent on the part of the appellants to such policy appear in or on the policy issued by them. On the 3rd of August, 1877, the building was destroyed by fire. On the 18th of March, 1878, the respondent commenced an action against the appellants for the sum secured. The appellants in their defence relied on the non-disclosure by the respondent of the previous insurance—first, as a breach of the conditions indorsed on the policy, and, secondly, as a breach of the statutory conditions prescribed by the Act of Ontario.

The respondent in reply denied that the policy was subject to the conditions indorsed on it, because they were not printed as variations from the statutory conditions in conspicuous type and ink of a different colour, or to the statutory conditions, because they did not appear on the policy.

The case was tried before Mr. Justice Patterson and a jury.

At the trial the respondent admitted that he was insured elsewhere, and that such insurance had not been brought to the notice of the appellants or indorsed on the policy, but contended that the Ontario Statute rendered void the condition relied on by the appellants as not having been indorsed in the form required by the statute as a variation of the statutory condition, and further, that the statutory conditions did not apply, not being indorsed on the policy.

The Judge ruled in favour of the respondent, and a verdict was entered for the respondent, the questions of law being reserved.

The appellants obtained a rule *nisi* in the Court of Queen's Bench of the province to enter a nonsuit. Upon the argument it was contended on behalf of the appellants—That the statute of Ontario, 39 Vict. c. 24, was *ultra vires* and

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void; and that even if the statute had any application, then upon its true construction the statutory conditions were imported into the policy.

The Court of Queen's Bench for the province gave judgment discharging the rule *nisi*, and held that insurance companies were, as regards insurances effected by them in the province of Ontario, bound by the statute 39 Vict. c. 24, and that a policy issued after the passing of the Act and not in compliance with its provisions, was to be deemed as against the assured as a policy without any conditions.

The appellants appealed to the Court of Appeal for the province, which Court dismissed the appeal.

From this judgment the first appeal was brought.

The appellants in the second appeal were an insurance company, having their chief office in England, and a branch office at Orangeville.

On the 3rd of August, 1877, the respondent insured for twelve months with the appellants, through their agent at Orangeville, a general stock of hardware on the respondent's premises at Orangeville, against loss by fire, for 2,000 dollars, and paid the amount of the premium, and received an *interim* protection note in the following form:—

"*Interim Receipt.* Fire Department.
Interim Protection Note. Queen Fire and Life Insurance Company. Chief Office, Queen Insurance Buildings, Liverpool. Canada Head Office, 191, St. James Street, Montreal.

"Orangeville, Agency, August 3, 1877.

"Mr. William Parsons, having this day proposed to effect an insurance against fire, subject to all the usual terms and conditions of this company, for 2,000 dollars, on the following property in the town of Orangeville, for twelve months, namely, on general stock of hardware, paints, oils, varnishes, window glass, stoves, tinware, castings, hollow ware, plated and fancy goods, lamps, lamp glasses, and general house furnishing goods.

"And having also paid the sum of 40 dollars as the premium on the same, it is hereby held assured under these con-

ditions until the policy is delivered or notice given that the proposal is declined by the company, when this *interim* note will be thereby cancelled and of no effect.

"(Signed) A. M. Kirkland, Agent to the Company.

"N.B.—The deposit will be returned, less the proportion for the period, on application to the agent signing this note, in the event of the proposal being declined by the company. If accepted, a policy will be prepared and delivered within thirty days. If the holder does not receive a policy during the specified period, he should apply to the head office in Montreal."

The usual terms and conditions, amongst others, included the following: "Persons who have insured property with this company shall give notice of any other insurance already made, or which shall afterwards be made elsewhere on the same property, so that a memorandum of such other insurance shall be indorsed on the policy or policies effected with this company, otherwise such policy or policies will be void. . . . This company will not be responsible for any goods or articles stolen at or after any fire, nor will this company be liable for any loss or damage when more than ten pounds weight of gunpowder, or where any camphine, burning fluid, kerosine, or refined coal oil, or refined petroleum oil, is deposited or kept on the premises, unless the same be specially allowed in the body of the policy, and suitable extra premium paid."

On the 3rd of August, the day on which the *interim* protection note was issued, a fire occurred at the store of the respondent, and the hardware was destroyed. At the time the *interim* protection note was issued, there were in addition to the policies already mentioned other policies effected on the same property of the respondent. No notice of these policies or any of them was given to the appellants by the respondent, nor was any memorandum of them or any of them indorsed on the *interim* protection note. After the issuing of the *interim* protection note, and while the same was in force, the respondent had kept on his premises more than ten pounds weight of gunpowder without the same having been specially

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allowed in the body of the *interim* protection note, or any suitable extra premium having been paid.

On the 18th of March, 1878, the respondent commenced an action against the second appellants for the amount of the insurance.

The appellants pleaded a breach by the respondent of the conditions on which the *interim* protection note was given, namely, that there were other insurances on the same property, and that the respondent gave no notice thereof to the appellants; and that the respondent had kept upon the premises more than ten pounds weight of gunpowder without the same having been allowed in the body of the *interim* protection note, or suitable premium paid therefore. And the appellants further pleaded a breach by the respondent of the statutory conditions.

The respondent joined issue on these pleas.

The cause was tried before A. Macdonald, Esq., the Judge of the County Court of Wellington, and a jury.

It was admitted by the respondent that the usual terms and conditions indorsed on the appellants' policies had not been complied with; but it was contended that the Ontario statute rendered void the terms and conditions, they not having been indorsed as required by the statute, and that the statutory conditions did not apply, in that they were not indorsed on the *interim* protection note.

The Judge ruled that the only one of the statutory conditions upon which reliance could be placed by the appellants, was the condition that the sum insured should not be recovered if more than twenty-five pounds of gunpowder were on the premises at the time of the fire; he left the question to the jury whether there were twenty-five pounds of gunpowder on the premises at the time of the fire or not. The jury found that there were not twenty-five pounds of gunpowder on the premises at the time of the fire, and a verdict was entered for the respondent, with leave for the appellants to enter a nonsuit if the usual terms and conditions were binding on the respondent.

On the 23rd of May, 1878, the appellants obtained a rule *nisi* in the Court

of Queen's Bench of the province to enter a nonsuit pursuant to leave reserved.

The case came on for hearing, on the 29th of June, 1878, in the Court of Queen's Bench of the province of Ontario. The Court of Queen's Bench, on the 29th of June, 1878, discharged the rule *nisi*.

The appellants appealed to the Court of Appeal of the province of Ontario. The appeal was heard in the Court of Appeal of Ontario, on the 22nd of March, and was dismissed.

The appellants then appealed to the Supreme Court of Canada. This appeal was heard in the Supreme Court of Canada before the Chief Justice, and Taschereau, Gwynne, Fournier and Henry, Justices. On the 21st of June, 1880, judgment was given, dismissing the appeal by a majority of the Judges.

From this judgment this appeal was brought.

The two appeals were heard at the same time.

The Solicitor-General (Sir F. Herschell, Q.C.), Benjamin Bethune of the Canadian Bar, and *Jeune*, for the appellants in both appeals.—The Provincial Legislature had no power to pass the Act relating to fire insurance. Such matters are expressly reserved for the Dominion Parliament. They concern "trade" and "commerce." The words "civil rights," as used in section 92 of the Act of British North America, are rights arising by law, and not rights derived from contract. The conditions which appear on the policy with the Citizens Insurance do not entitle the respondent to claim under the policy. These conditions were assented to by the respondent. In the case of the Queen Insurance the respondent expressly agreed to accept a policy containing the usual terms and conditions imposed by that company. The *interim* protection note was not a policy, and was therefore not subject to the statute, but was an express agreement between the parties.

The Attorney-General (Sir H. James, Q.C.), and A. L. Smith, for the respondent in both appeals.—The Provincial Legislature had power to make laws with respect to fire insurance. Such legislation does not affect "trade" or "commerce," and is

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therefore not reserved exclusively for the Dominion Parliament. The rights arising out of a contract of fire insurance are "civil rights," and as such are expressly subject to the legislative authority of the Provincial Parliament, by virtue of section 92 of the Act of British North America, 1867. The respondent is entitled to treat the policy with the Citizens Insurance Company as independent of all conditions. The conditions on the policy were certainly not binding on the respondent, because they were not in the form prescribed by the statute. In the case of the policy with the Queen Insurance Company the statute, if applicable, is applicable to the *interim* protection note, which is a policy within the meaning of the Act.

SIR MONTAGUE SMITH delivered the judgment of their Lordships (1):—

The questions in these appeals arise in two actions brought by the same plaintiff (the respondent) upon contracts of insurance against fire of buildings situate in the province of Ontario, in the Dominion of Canada.

The most important question in both appeals is one of those, already numerous, which have arisen upon the provisions of the British North America Act, 1867, relating to the distribution of legislative powers between the Parliament of Canada and the Legislatures of the Provinces, and, owing to the very general language in which some of these powers are described, the question is one of considerable difficulty. Their Lordships propose to deal with it before approaching the facts on which the particular questions in the actions depend. It will only be necessary to premise that "The Citizens Insurance Company of Canada," the defendants in the first action, were originally incorporated by an Act of the late Province of Canada, 19 & 20 Vict. c. 124, by the name of "The Canada Marine Insurance Company." By another Act of the late province, 27 & 28 Vict. c. 98, further powers, including the power of effecting contracts of insurance against fire, were

conferred on the company, and its name changed to "The Citizens Insurance and Investment Company"; and, finally, by an Act of the Dominion Parliament, its name was again changed to the present title, and it was enacted that, by its new name, it should enjoy all the franchises, privileges and rights, and be subject to all the liabilities of the company under its former name.

The Queen Insurance Company is an English fire and life insurance company incorporated under the provisions of the Joint Stock Companies Act of the Imperial Parliament, 7 & 8 Vict. c. 110. It has its principal office in England, and carries on business in Canada.

The defendant company in each of the actions is the appellant.

The statute impeached by the appellants, as being an excess of legislative power, is an Act of the Legislature of the Province of Ontario (39 Vict. c. 24), intituled "An Act to secure uniform Conditions in Policies of Fire Insurance."

The preamble of the Act is as follows: "Whereas under the provisions of an Act passed in the 38th year of the reign of Her Majesty, intituled 'An Act to amend the Laws relating to Fire Insurances,' the Lieutenant-Governor issued a commission to certain commissioners therein named, requiring them to consider and report what conditions are just and reasonable conditions to be inserted in fire insurance policies on real or personal property in this province: And whereas a majority of the said commissioners have, in pursuance of the requirements of the said Act, settled and approved of the conditions set forth in the schedule to this Act; and it is advisable that the same should be expressly adopted by the Legislature as the statutory conditions to be contained in policies of fire insurance entered into or in force in this province."

It enacts as follows. [His Lordship read the first, second and third sections of the statute.]

The schedule contains twenty-one conditions under the head "Statutory Conditions." The following of them are material to the particular questions to be decided in the appeals: "After application for insurance, it shall be deemed that any policy

(1) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobbouse.

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sent to the assured is intended to be in accordance with the terms of the application, unless the company shall, in writing, point out the particulars wherein the policy differs from the application."

[His Lordship read conditions 8 and 9.] Condition 10 provides that "The company is not liable for the losses following, that is to say, among others: (g) The company is not liable for loss or damage occurring while petroleum," and various other enumerated substances, "or more than twenty-five pounds weight of gunpowder, are stored or kept in the building insured, or containing the property insured, unless permission is given in writing by the company."

The distribution of legislative powers is provided for by sections 91 to 95 of "the British North America Act, 1867"; the most important of these being section 91, headed "Powers of the Parliament," and section 92, headed "Exclusive Powers of Provincial Legislatures."

Section 91 is as follows: "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say,—"

Then follows an enumeration of twenty-nine classes of subjects.

The section concludes as follows: "And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces."

Section 92 is as follows: "In each province the Legislature may exclusively make laws in relation to matters coming within

the classes or subjects next hereinafter enumerated, that is to say,—"

Then follows an enumeration of sixteen classes of subjects.

The scheme of this legislation, as expressed in the first branch of section 91, is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters not coming within the classes of subjects assigned exclusively to the provincial legislature. If the 91st section had stopped here, and if the classes of subjects enumerated in section 92 had been altogether distinct and different from those in section 91, no conflict of legislative authority could have arisen. The provincial legislatures would have had exclusive legislative power over the sixteen classes of subjects assigned to them, and the Dominion Parliament exclusive power over all other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the provincial legislatures unavoidably ran into and were embraced by some of the enumerated classes of subjects in section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the 91st section, "for greater certainty, but not so as to restrict the generality of the foregoing terms of this section," that (notwithstanding anything in the Act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects enumerated in that section. With the same object, apparently, the paragraph at the end of section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of section 92.

Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the Legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament. Take as one in-

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stance the subject "marriage and divorce," contained in the enumeration of subjects in section 91; it is evident that solemnization of marriage would come within this general description; yet "solemnization of marriage in the province" is enumerated among the classes of subjects in section 92, and no one can doubt, notwithstanding the general language of section 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So "the raising of money by any mode or system of taxation" is enumerated among the classes of subjects in section 91; but, though the description is sufficiently large and general to include "direct taxation within the province, in order to the raising of a revenue for provincial purposes," assigned to the provincial legislatures by section 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one. With regard to certain classes of subjects, therefore, generally described in section 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the provinces. In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the language of the two sections must be read together, and that of one interpreted, and, where necessary, modified, by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.

The first question to be decided is, whether the Act impeached in the present appeals falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the legislatures of the provinces; for if it does not, it can be of no validity, and no other question would then arise. It is only when an Act of the provincial legislature *prima facie* falls within one of these classes of subjects that the further questions arise—namely, whether, notwithstanding this is so, the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, and whether the power of the provincial legislature is or is not thereby overborne.

The main contention on the part of the respondent was that the Ontario Act in question had relation to matters coming within the class of subjects described in No. 13 of section 92—namely, "Property and Civil Rights in the Province."

The Act deals with policies of insurance entered into or in force in the province of Ontario for insuring property situate therein against fire, and prescribes certain conditions which are to form part of such contracts. These contracts, and the rights arising from them, it was argued, came legitimately within the class of subject, "Property and Civil Rights." The appellants, on the other hand, contended that civil rights meant only such rights as flowed from the law, and gave as an instance the *status* of persons. Their Lordships cannot think that the latter construction is the correct one. They find no sufficient reason in the language itself, nor in the other parts of the Act, for giving so narrow an interpretation to the words "civil rights." The words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in any of the enumerated classes of subjects in section 91.

It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable

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intendment be modified and limited. In looking at section 91, it will be found not only that there is no class, including generally contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated—namely, “18, bills of exchange and promissory notes,” which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the Dominion Parliament.

The provisions found in section 94 of the British North America Act, which is one of the sections relating to the distribution of legislative powers, was referred to by the learned counsel on both sides as throwing light upon the sense in which the words “property and civil rights” are used. By that section the Parliament of Canada is empowered to make provision for the uniformity of any laws relative to “property and civil rights” in Ontario, Nova Scotia and New Brunswick, and to the procedure of the Courts in these three provinces, if the provincial legislatures choose to adopt the provision so made. The province of Quebec is omitted from this section for the obvious reason that the law which governs property and civil rights in Quebec is in the main the French law, as it existed at the time of the cession of Canada, and not the English law which prevails in the other provinces. The words “property and civil rights” are obviously used in the same sense in this section as in No. 13 of section 92, and there seems no reason for presuming that contracts and the rights arising from them were not intended to be included in this provision for uniformity. If, however, the narrow construction of the words “civil rights” contended for by the appellants were to prevail, the Dominion Parliament could, under its general power, legislate in regard to contracts in all and each of the provinces, and, as a consequence of this, the province of Quebec, though now governed by its own Civil Code, founded on the French law, as regards contracts and their incidents, would be subject to have its law on that subject altered by the Dominion Legislature, and brought into uniformity with the English law prevailing in the other three provinces, notwithstanding

that Quebec has been carefully left out of the uniformity section of the Act.

It is to be observed that the same words, “civil rights,” are employed in the Act of 14 Geo. 3. c. 83, which made provision for the government of the province of Quebec. Section 8 of that Act enacted that His Majesty's Canadian subjects within the province of Quebec should enjoy their property, usages and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada, and be determined agreeably to the said laws. In this statute the words “property” and “civil rights” are plainly used in their largest sense; and there is no reason for holding that in the statute under discussion they are used in a different and narrower one.

The next question for consideration is whether, assuming the Ontario Act to relate to the subject of property and civil rights, its enactments and provisions come within any of the classes of subjects enumerated in section 91. The only one which the appellants suggested as expressly including the subject of the Ontario Act is No. 2, “the regulation of trade and commerce.”

A question was raised which led to much discussion in the Courts below and at this bar—namely, whether the business of insuring buildings against fire was a trade. This business, when carried on for the sake of profit, may, no doubt, in some sense of the word, be called a trade. But contracts of indemnity made by insurers can scarcely be considered trading contracts, nor were insurers who made them held to be “traders” under the English bankruptcy laws; they have been made subject to those laws by special description. Whether the business of fire insurance properly falls within the description of “a trade” must, in their Lordships' view, depend upon the sense in which that word is used in the particular statute to be construed; but in the present case their Lordships do not find it necessary to rest their decision on the narrow ground that the business of insurance is not a trade.

The words “regulation of trade and com-

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merce," in their unlimited sense, are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign Governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the Act shews that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern, affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary; as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

"Regulation of trade and commerce" may have been used in some such sense as the words "regulations of trade" in the Act of Union between England and Scotland (6 Anne c. 11), and as these words have been used in other Acts of State. Article V. of the Act of Union enacted that all the subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation" to and from all places in the United Kingdom and the Colonies; and Article VI. enacted that all parts of the United Kingdom from and after the Union should be under the same "prohibitions, restrictions and regulations of trade." Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the Articles of Union. Thus the Acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to Acts relating to bankruptcy, and various other matters.

Construing therefore the words "regulation of trade and commerce" by the various aids to their interpretation above suggested, they would include political ar-

rangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion Parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance, in a single province, and therefore its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the Legislature of Ontario by No. 13 of section 92.

Having taken this view of the present case, it becomes unnecessary to consider the question how far the general power to make regulations of trade and commerce, when competently exercised by the Dominion Parliament, might legally modify or affect property and civil rights in the provinces, or the legislative power of the provincial legislatures in relation to those subjects; questions of this kind, it may be observed, arose and were treated of by this board in the cases of *L'Union St. Jacques de Montreal v. Belisle* (2) and *Cushing v. Dupuy* (3).

It was contended, in the case of the Citizens Insurance Company of Canada, that the company having been originally incorporated by the Parliament of the late province of Canada, and having had its incorporation and corporate rights confirmed by the Dominion Parliament, could not be affected by an Act of the Ontario Legislature. But the latter Act does not assume to interfere with the constitution or status of corporations. It deals with all insurers alike, including corporations and companies, whatever may be their origin, whether incorporated by British authority, as in the case of the Queen Insurance Company, or by foreign or colonial autho-

(2) Law Rep. 6 P.C. 31.

(3) Law Rep. 5 App. Cas. 409; 49 Law J. Rep. P.C. 63.

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city, and without touching their *status*, requires that if they choose to make contracts of insurance in Ontario, relating to property in that province, such contracts shall be subject to certain conditions.

It was further urged that the Ontario Act was repugnant to the Act of the late province of Canada, which empowered the company to make contracts for assurance against fire "upon such conditions as might be bargained for and agreed upon between the company and the assured." But this is, in substance, no more than an expanded description of the business the company was empowered to transact—namely, to make contracts of assurance against fire—and can scarcely be regarded as inconsistent with the specific legislation regarding such contracts contained in the Act in question.

It was further argued on the part of the appellants that the Ontario Act was inconsistent with the Act of the Dominion Parliament, 38 Vict. c. 20, which requires fire insurance companies to obtain licences from the Minister of Finance as a condition to their carrying on the business of insurance in the Dominion, and that it was beyond the competency of the provincial legislature to subject companies who had obtained such licences, as the appellant companies had done, to the conditions imposed by the Ontario Act. But the legislation does not really conflict or present any inconsistency. The statute of the Dominion Parliament enacts a general law applicable to the whole Dominion, requiring all insurance companies, whether incorporated by foreign, Dominion or provincial authority, to obtain a licence from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the Act. Assuming this Act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way interferes with the authority of the legislature of the province of Ontario to legislate in relation to the contracts which corporations may enter into in that province. The Dominion Act contains the following provision, which clearly recognises the right of the provincial legislature to incorporate insurance companies for carrying on business within the province itself:—

"But nothing herein contained shall prevent any insurance company incorporated by or under any Act of the legislature of the late province of Canada or of any province of the Dominion of Canada from carrying on any business of insurance within the limits of the late province of Canada, or of such province, only according to the powers granted to such insurance company within such limits as aforesaid, without such licence as hereinafter mentioned."

This recognition is directly opposed to the construction sought to be placed by the appellants' counsel on the words "provincial objects" in No. 11 of section 92—"the incorporation of companies with provincial objects," by which he sought to limit these words to "public" provincial objects, so as to exclude insurance and commercial companies.

Chief Justice Ritchie refers to an equally explicit recognition of the power of the provinces to incorporate insurance companies contained in an earlier Act of the Dominion Parliament (31 Vict. c. 48) which was passed shortly after the establishment of the Dominion.

The learned Chief Justice also refers to a remarkable section contained in the Act of the Dominion Parliament consolidating certain Acts respecting insurance, 40 Vict. c. 42. Section 28 of that Act is as follows:—

"This Act shall not apply to any company within the exclusive legislative control of any one of the provinces of Canada, unless such company so desires; and it shall be lawful for any such company to avail itself of the provisions of this Act, and if it do so avail itself, such company shall then have the power of transacting its business of insurance throughout Canada."

This provision contains a distinct declaration by the Dominion Parliament that each of the provinces had exclusive legislative control over the insurance companies incorporated by it, and therefore is an acknowledgment that such control was not deemed to be an infringement of the power of the Dominion Parliament as to "the regulation of trade and commerce."

The declarations of the Dominion Parliament are not, of course, conclusive upon the construction of the British North America Act; but when the proper con-

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struction of the language used in that Act to define the distribution of legislative powers is doubtful, the interpretation put upon it by the Dominion Parliament in its actual legislation may properly be considered.

The opinions of the majority of the Judges in Canada, as summed up by Chief Justice Ritchie, are in favour of the validity of the Ontario Act. In the present action, the Court of Queen's Bench and the Court of Appeal of Ontario unanimously supported its legality; and the Supreme Court of Canada, by a majority of three Judges to two, has affirmed the judgment of the Provincial Courts. The opinions of the learned Judges of the Supreme Court are stated with great fulness and ability, and clearly indicate the opposite views which may be taken of the Act, and the difficulties which surround any construction that may be given to it.

Mr. Justice Taschereau, in the course of his vigorous judgment, sought to place the plaintiff in the action against the Citizens Company in a dilemma. He thinks that the assertion of the right of the province to legislate with regard to the contracts of insurance companies amounts to a denial of the right of the Dominion Parliament to do so, and that this is, in effect, to deny the right of that Parliament to incorporate the Citizens Company, so that the plaintiff was suing a non-existent defendant. Their Lordships cannot think that this dilemma is established. The learned Judge assumes that the power of the Dominion Parliament to incorporate companies to carry on business in the Dominion is derived from one of the enumerated classes of subjects—namely, "the regulation of trade and commerce," and then argues that if the authority to incorporate companies is given by this clause, the exclusive power of regulating them must also be given by it, so that the denial of one power involves the denial of the other. But, in the first place, it is not necessary to rest the authority of the Dominion Parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces, and the only subject on this

head assigned to the provincial legislature being "the incorporation of companies with provincial objects," it follows that the incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada. But it by no means follows (unless indeed the view of the learned Judge is right as to the scope of the words "the regulation of trade and commerce") that because the Dominion Parliament had alone the right to create a corporation to carry on business throughout the Dominion, it alone has the right to regulate its contracts in each of the provinces. Suppose the Dominion Parliament were to incorporate a company, with power, among other things, to purchase and hold lands throughout Canada in mortmain, it could scarcely be contended if such a company were to carry on business in a province where a law against holding land in mortmain prevailed (each province having exclusive legislative power over "property and civil rights in the province") that it could hold land in that province in contravention of the provincial legislation; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist and preserve its *status* as a corporate body.

On the best consideration they have been able to give to the arguments addressed to them and to the judgments of the learned Judges in Canada, their Lordships have come to the conclusion that the Act in question is valid.

Their Lordships have now to consider separately the two appeals.

THE CITIZENS INSURANCE COMPANY OF
CANADA V. PARSONS.

This company, whose incorporation has been already described, has its head office in Montreal, and carries on business in Ontario and the other provinces of Canada.

The respondent insured with the company, through its local agent in the town of Orangeville, Ontario, a building situate in that town, occupied as a hardware store, for one year, in 2,500 dollars, and

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on the 4th of May, 1877, a policy of the company containing this insurance was issued by the agent at Orangeville to him. This policy was made subject to the usual conditions of the company, which were indorsed on it. The following is alone material:—

“The assured must give notice to this company of any other insurance effected on the same property, and have the same indorsed on this policy, or otherwise acknowledged by the company in writing, and failure to give such notice shall void this policy. . . . And this policy is made and accepted under the conditions above mentioned, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for.”

The conditions contained in the Ontario Act were not printed in the policy, nor was any reference made to them in it.

On the 3rd of August, 1877, the insured building was destroyed by fire. The respondent thereupon brought the present action.

At the time the insurance was made and the policy issued by the Citizens Company another insurance had been effected on the same building with the Western Assurance Company, of which no notice was given by the respondent to the Citizens Company, nor was it indorsed on or indicated in the policy, nor did the acknowledgment or assent of the Citizens Company thereto in writing in any way appear. These omissions constituted a breach not only of the conditions indorsed on the policy, but also of the condition in relation to prior insurances contained in the Ontario Act already set out, and consequently, if either of these conditions forms a part of the contract between the parties, the respondent's action against the company must fail. It is admitted that this is so; but it is contended, on the part of the respondent, that neither the agreed nor the statutory conditions are binding upon him, and that the contract of insurance is subject to no conditions whatever. The Courts of Canada have sustained this contention.

The question turns on the construction of the Ontario Act. It is not disputed by

the company that the conditions indorsed on the policy, which form the actual contract between the parties, are by force of the statute, displaced, inasmuch as they are not shewn to be variations from the statutory conditions in compliance with the provisions of the Act. The question to be decided is, whether the effect of this non-compliance is to make the contract subject to the statutory conditions, or to reduce it to a bare contract of insurance without any conditions.

Section 1 enacts that “the conditions set forth in the schedule to the Act shall, as against the insurers, be deemed to be part of every policy.” Notwithstanding this express enactment, it is contended that they are not to be so deemed, unless they are printed on the policy. The section, no doubt, goes on to enact, but not in the form of a proviso or condition, that the conditions “shall be printed on every such policy, with the heading ‘Statutory Conditions’”; but it does not enact that, if there be an omission so to print them, they shall not be deemed to be a part of the contract. Printing the statutory conditions is made a necessary part of the mode prescribed by the Act of shewing variations from them, and is unquestionably essential to the validity of any such variations, for the section further enacts that if insurers desire to vary the statutory conditions, or to omit any of them, or to add new conditions, “there shall be added, in conspicuous type, and in ink of different colour, words to the following effect: ‘Variations in Conditions—This policy is issued on the above statutory conditions, with the following variations and additions.’”

Section 2 provides what may be called a penalty for the non-observance of these last-mentioned provisions. It enacts that, unless distinctly indicated in the manner prescribed, “no such variation, addition or omission shall be legal and binding on the insured,” and, “on the contrary,”—here follows the consequence and penalty—“the policy shall, as against the insurers, be subject to the statutory conditions only.” The effect of these enactments in the present case is that the conditions written on the policy are not binding on the insurer, either by virtue of the actual

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contract, or as variations from the statutory conditions, because they are not indicated to be so in the manner prescribed by the statute. Printing the statutory conditions is a necessary part of the manner prescribed for indicating these variations, and the penalty provided by the Act for not observing that manner, is that *the policy becomes subject to the statutory conditions*. No provision is made for the omission to print the statutory conditions as a separate default; and their Lordships think, looking at the object and scope of the two sections, that, in the absence of an express enactment to that effect, it cannot be implied that the intention of the Legislature was that, in a case where the company had printed its own conditions, but had failed to print the statutory ones, the policy is to be deemed to be without any conditions. Indeed, such an implication would seem to be opposed to the principle of the Act, which is that, except in the case of variations properly indicated, the statutory conditions shall be deemed to be part of every policy.

It was further contended, and the contention seems to have been supported by some of the Judges, that if the statutory conditions, in cases like the present, are to be deemed to be a part of the policy, they form a part of the contract only as against the insurers, and are not binding on the assured. Their Lordships cannot agree with this construction of the Act. The first section of the Act, which declares that the statutory conditions shall be deemed to be part of every policy of fire insurance, also contains the words "as against the insurers," and it is evident that these words must have the same meaning in both sections. If the construction put on them by the respondent be correct, it would follow that in a case where an insurance company implicitly followed the direction of the statute, and printed the statutory conditions on its policies without more, the conditions would still be a part of the contract only as against the company, and the assured would not be bound by them. Such a construction leads to manifest absurdity, and to consequences which the Legislature could not have intended. The preamble of the Act shows that the con-

ditions were passed by the Legislature as being "just and reasonable." On looking at the twenty-one conditions contained in the schedule, it will be found, as might naturally be expected, that they are all, with a trifling exception, protective of the insurers, though probably less stringent than those usually imposed by the companies themselves. They impose obligations not on the insurers but the assured. To construe the statute, therefore, as enacting that these conditions are binding only on the insurers for whose protection they are introduced into the contract, and not on the assured by whom they are to be performed, would be to affirm that the Legislature had used words signifying, in effect, that the conditions which it has declared shall be a part of the contract shall not be binding at all. But effect may be given to the words in question without resorting to such a construction of them.

Strong reasons would be required to shew that the words "as against the insurers" are used in the 2nd section in a different sense from that in which they are used in the 1st, but none can be suggested. The 2nd section provides as an alternative, that unless the variations are shewn in the prescribed manner, the policy shall, as against the insurers, be subject to the statutory conditions only—that is to say, the variations as against the company shall not, and the statutory conditions shall, avail. If the respondent's construction were to prevail, though the consequences under this section might not be so manifestly absurd as in the case already adverted to of a company having simply printed the statutory conditions without more, it would still lead to much injustice; for if a company in making variations, though in all other respects complying with the statute, should not use what might be thought conspicuous type or ink of the right colour, not only would the variations it had attempted to make be of no effect, but it could not invoke the statutory conditions, and the insured would be free from any conditions whatever.

It may possibly have been intended to give to the assured an option, if he thought the company's conditions more favourable to him than the statutory ones, to stand

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upon the actual conditions; but it could not have been intended, nor does the language of the Act need such a construction, that he should be set free from both sets of conditions. The meaning of the legislation, though no doubt unhappily expressed, appears to be, that whatever may be the conditions sought to be imposed by insurance companies, no such conditions should avail against the statutory conditions, and that the latter should alone be deemed to be part of the policy, and resorted to by the insurers, notwithstanding any conditions of their own, unless the latter are indicated as variations in the prescribed manner.

Their Lordships being of opinion that the policy in this case became subject to the statutory conditions, and there having been a breach of those conditions, the plaintiff's action against the Citizens Insurance Company fails. They will therefore humbly advise Her Majesty to order that the judgments appealed from be reversed, and that the rule obtained by the company to set aside the verdict and enter a nonsuit be made absolute.

THE QUEEN INSURANCE COMPANY v.
PARSONS.

This English corporation carries on business at Orangeville through an agent. On the 3rd of August, 1877, the respondent applied to this agent to effect with the company an insurance for 2,000 dollars on a general stock of hardware and other goods contained in the building in Orangeville, which was the subject of insurance in the other action, and a premium of 40 dollars was agreed on.

An *interim* receipt was thereupon given to the respondent by the agent, which is in the following terms:—

[His Lordship read the *Interim* receipt.]

A fire happened on the same day, before a policy had been delivered to the respondent.

The action was brought upon the *interim* receipt. The declaration which was framed upon it, as originally drawn, set out the conditions of the company as those to which the insurance was declared by the *interim* note to be subject. It is agreed that the declaration was afterwards amended by striking out these conditions,

though the amendment does not appear on the record.

Having regard to the arguments addressed to their Lordships, it is only material to refer to one of the company's usual conditions—the 10th—which provides, among other things, that the company will not be liable for any loss or damage when more than ten pounds weight of gunpowder is deposited or kept on the premises, unless the same is especially allowed in the body of the policy, and suitable extra premium paid. This quantity of gunpowder is smaller than that mentioned in the statutory condition above set out, 10, which provides that the company is not liable for loss or damage occurring while, among other things, more than twenty-five pounds weight of gunpowder are stored or kept in the building containing the property insured.

It is admitted that at the time of the fire gunpowder exceeding ten pounds in weight was kept in the building destroyed by the fire, and the jury have found that the quantity so kept was less than twenty five pounds.

It is contended on the part of the respondent that the contract must, by force of the Ontario Act in question, be treated as being without any conditions; or, if subject to any, to the statutory conditions only.

The judgment of their Lordships in the other action has disposed of the first of these contentions. The second raises the question, whether the company's own conditions or the statutory conditions are to be regarded as forming part of the contract, and its answer depends upon a consideration of the further question, whether the *interim* note is a policy of insurance within the meaning of that term in the Ontario Act.

This note is not a policy of insurance in the common understanding of that word, and was certainly not understood to be so by the parties to it. It is expressly a contract for a policy, making *interim* provision until a policy is prepared and delivered. It contains a proposal for insurance, which, if accepted by the company, would result in a policy to be based on the terms of the proposal, and issued by the company to the respondent;

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the company having an option to decline the proposal, in which case no policy would be delivered. The proposal thus offered for acceptance is "to effect an insurance subject to all the usual terms and conditions of this company," and pending the acceptance or refusal of the company, and until the policy is delivered or notice given that the insurance is declined, the property is "held assured under these conditions." No doubt this last stipulation forms a contract of insurance during this interval; but the whole agreement is preliminary only, and, in substance, the note is a proposal for a policy, to be carried into effect, if accepted, by the delivery of a policy; as subsidiary thereto, and for the convenience of the person proposing to insure, immediate protection is granted to him. The practice of issuing *interim* notes must have been well known, and apt words might have been found by the Legislature to describe them if they had been intended to be included in the Act. It may have been thought that it would be a clog upon the business of insurance, and would place difficulties in the way of obtaining these *interim* protection notes, if companies were obliged to prepare them with all the fulness and formalities which the Act requires in the case of policies.

Their Lordships, therefore, are disposed to come to the conclusion that the *interim* note in question is not a policy of insurance within the meaning of the Act. If in any case it should appear that an *interim* note or any like instrument was intended by the parties to be the complete and final contract of insurance, and that this shape was given to the instrument for the purpose of evading the Act, the present decision would not be opposed to the instrument being treated as a policy of insurance; the ground of their present decision being that the *interim* note in this case is what it professes to be, preliminary only to the issuing of another instrument—namely, a policy, which the parties *bona fide* intended should be issued.

These *interim* protection notes, given by fire insurance companies, bear an analogy to the "slips," commonly used in cases of marine insurance, preliminary

to the issuing of policies. The slip contains the heads of the contract, and is in itself a contract of insurance, though by the statute law of England, passed for revenue purposes, it could not, until the recent Act of 23 Vict. c. 23, be looked at by a Court of law for any purpose. Since that Act, it may, for some purposes, be given in evidence. In a case in the Court of Queen's Bench in England, in which the nature and effect of these slips came under discussion, Mr. Justice Blackburn says, "As the slip is clearly a contract for marine insurance, and as clearly is not a policy, it is, by virtue of these enactments, not valid—that is, not enforceable at law or in equity; but it may be given in evidence wherever it is, though not valid, material."

What then are the conditions of the contract which is the subject of this action? The *interim* note contains a proposal by the respondent to effect an insurance on the company's "usual terms and conditions," and the *interim* insurance is made subject to these conditions. If the contract of the parties had come to be executed, the company would perform it by issuing a policy, subject to their own conditions, if they could legally do so. Indeed, if the assured so required, it would be obligatory on them to perform it in this manner. In the view their Lordships take of the Act in question, the company might, conformably with its enactments, issue a policy with their own conditions, provided that care was taken to print the statutory conditions, and shew the variations from and the additions to them which their own conditions present, in the manner prescribed. They think that it ought to be presumed that the company would thus perform their contract when they came to issue a policy; and this being so, that their own conditions ought to be read into the *interim* contract to the extent to which they might lawfully be made a part of the policy when issued, by following the directions of the statute, subject always to the statutable condition that they should be held to be just and reasonable by the Court or Judge.

For these reasons, their Lordships think that the judgment of the Court of Queen's

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Bench discharging the appellant's rule for setting aside the verdict for the plaintiffs, and the judgments affirming it, ought to be reversed; but their Lordships do not see their way to decide the question which now arises, and was not determined by the Judge who tried the action, or by any of the Courts in Canada, whether the company's condition with respect to the quantity of gunpowder kept in the building containing the property insured is just and reasonable. They think the rule nisi should be kept open, and the action remitted to the Court of Queen's Bench in order to the trial of this question, with a direction that the rule be disposed of according to the decision that may be come to upon it, and they will humbly advise Her Majesty to this effect.

The appellants, though successful on other points, having failed on the important question of the validity of the Ontario statute, on which special leave to appeal from the judgment of the Supreme Court was granted by this Board, their Lordships think it right to make no order as to the costs of these appeals.

Solicitors—Bompas, Bischoff & Dodgson, for appellants; Johnston & Harrison, agents for McCarthy, Hoskin & Co., Toronto, U.S., for respondent.

1882. Jan. 21. { THE REV. ROBERT DOBIE (*appellant*) v. THE "BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH OF SCOTLAND" (*respondents*.)

Canada—Quebec—Provincial Legislatures—Powers of—The British North America Act, 1867—Construction—Presbyterian Church.

The powers conferred by section 129 of the British North America Act, 1867, on the Provincial Legislatures of Ontario and Quebec to repeal and alter the statutes of the old Parliament of the Province of

Canada, are precisely coextensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act.

By an Act of the old Parliament of Canada (22 Vict. c. 66) a Board was incorporated for the management of the Temporalities Fund of the Presbyterian Church of Canada. The fund was to be administered in a certain manner and for certain purposes. By an Act of the Legislature of Quebec (38 Vict. c. 64) the disposition of the fund was altered. The provisions of the Act were approved by the Synod of the Church, but the appellant, a minister of the Church, protested against the alteration. The appellant's pecuniary interest was not affected:—

Held, first, that the subject-matter of legislation was not "property or civil rights in the province" within the meaning of section 92 of the Act of 1867, and that the Act of the Legislature of Quebec was therefore ultra vires; secondly, that though the majority of the Church Synod assented to the provisions, such assent was not binding on the appellant; and thirdly, that the appellant was entitled to a decree, though his pecuniary interest was not affected.

This was an appeal from a judgment of the Court of Queen's Bench for the Province of Quebec, Canada.

The appellant was a minister of the Presbyterian Church of Canada, appointed prior to the year 1853. The respondents were the Board of Management of that Church.

The facts out of which the appeal arose were as follows:—

By the 31 Geo. 3. c. 31 (Great Britain), the King was authorised to authorise the Governor of Upper and Lower Canada to appropriate lands out of the domain of the Crown in those provinces for the support of a Protestant clergy.

Under that statute appropriations of land were made in both provinces. These lands were called clergy reserves.

By the 16 Vict. c. 21 (Great Britain), the Legislature of Canada was empowered to make provisions with respect to the reserves, but it was expressly enacted that it should not be lawful for such Legis-

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lature to annul, suspend or reduce any of the annual stipends or allowances already assigned to the clergy with respect to the reserves during their lives and incumbencies.

In 1855, the Legislature of Canada, under the powers conferred by this Act, passed an Act, 18 Vict. c. 2, for the regulation of the clergy reserves and the proceeds thereof. By the 3rd section of this Act it was enacted that the Governor in Council might, with the consent of the parties and bodies severally interested, commute the annual stipend receivable by them respectively for the value thereof.

The Synod of the Presbyterian Church afterwards met, and commissioners were appointed, with power to give the formal sanction of the Synod to such a commutation as they should approve; but that such formal sanction should not be given except in the case of ministers who had also individually given the commissioners power and authority to act for them in the matter; that the interest of the fund should be devoted in the first instance to the payment of 112*l.* 10*s.* each, and that the next claim to be settled, if the fund should admit, and as soon as it should admit of it, to the 112*l.* 10*s.*, should be that of the ministers then on the Synod's roll and who had been put on the Synod's roll since the 9th of May, 1853 (being the date on which the 16 Vict. c. 21 came into force).

All the ministers of the Presbyterian Church of Canada, including the appellant, assented to this commutation.

On the 24th of July, 1858, an Act of the Province of Canada, 22 Vict. c. 66, was passed, intituled "An Act to incorporate the board for the management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland." The Act declared that the corporation thereby created should hold the funds of the "Presbyterian Church of Canada in connection with the Church of Scotland," then held by certain commissioners on behalf of that Church, and it provided that such holding should be subject always to the condition that the annual revenues of the fund should remain subject to the several annual charges in favour of the several ministers as the same

were constituted at the formation of the funds, and the Act further provided for the mode of election of the board.

The corporation, so constituted, continued to manage and administer the funds arising from the commutation and other funds contributed for Church purposes.

In 1875, a party in the said Church, under protest of the minority, obtained from the Provincial Legislatures of Ontario and Quebec statutes authorising the union and fusion of certain Churches into one body, and transferring to the new body, with certain exceptions and limitations, the property.

The Act 38 Vict. c. 75 (Ontario) provided that all the property situated in the Province of Ontario and held at the time of the union of the said Churches by every congregation in connection or communion with any of them, should thenceforth belong to the said United Church, unless such congregation, within six months, declared its dissent by a vote of the majority of its members.

The corresponding statute of the Quebec Legislature (38 Vict. c. 64) contained similar provisions to the Ontario Act. By this Act the disposition of the Temporalities Fund was changed in some respects, but the appellant's pecuniary interest was not affected. The provisions of the Act were approved by the Synod of the Presbyterian Church of Canada; but a minority, including the appellant, objected to the change.

The appellant, with the concurrence and support of the ministers and members of the Presbyterian Church of Canada in connection with the Church of Scotland, and in order to secure their rights and his own, instituted proceedings for an injunction to arrest the illegal action of the Board, and to secure an application of the fund to the purposes for which it was created.

The petition prayed a writ of injunction, and that the Act 38 Vict. c. 64 (Quebec) be declared illegal and its subject-matter be declared *ultra vires* of the Legislature of Quebec; that the corporation be declared to be acting *ultra vires* and illegally in the respects above complained of; that it be adjudged and declared that the fund

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of the respondent corporation is held by them in trust for the Presbyterian Church of Canada in connection with the Church of Scotland, and for the ministers who have not ceased to be ministers thereof, and for no other purpose.

The respondents, by their plea, submitted that the funds in question were, and always had been, subject to the jurisdiction and control of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, which Synod are the legal owners thereof, and that the said board administer the fund subject thereto. That the said Synod did rightfully agree to form a union with the other Churches, and applied for and secured the Act 38 Vict. c. 64, and have since managed the funds under the authority of, and as directed by, the said Synod and under the authority of the said Act.

The cause was heard before Jetté, J., who gave judgment in favour of the respondents.

Against this judgment the now appellant appealed to the Court of Queen's Bench for Lower Canada.

On the 19th of June, 1880, the Court of Queen's Bench, by a majority of three against two, gave judgment dismissing the appeal.

From this judgment the present appeal was brought.

Davey, Q.C., Fullarton, and McMaster (Canadian Bar), for the appellant.—The statute 38 Vict. c. 64 (Quebec) is, in respect of the provisions material to this case, *ultra vires* and illegal. The Act 22 Vict. c. 66 (Canada) is in force, and valid and binding on the corporation respondents. The respondents have acted *ultra vires* and illegally in each and all of the respects complained of. The board is at present illegally constituted, and the respondents have no right to act as members of it. The "Presbyterian Church in Canada" is not identical with the "Presbyterian Church of Canada in connection with the Church of Scotland," and is not entitled to the rights, property and status of that Church, nor is its General Assembly identical with and entitled to the authority and rights of the Synod of the latter Church. They referred to *L'Union*

St. Jacques de Montreal v. Belisle (1), *Dow v. Black* (2), *Cushing v. Dupuy* (3), *The Attorney-General v. Welsh* (4), *The Attorney-General v. Munro* (5) and *The Attorney-General v. Murdoch* (6).

Benjamin, Q.C., Jeune, and Morris (Canadian Bar), for the respondents.—The Act of the Province of Quebec, 38 Vict. c. 64, is within the legislative authority conferred upon the Legislature of that province by the British North America Act, 1867. The "Presbyterian Church of Canada in connection with the Church of Scotland" continued its identity after its union with the other Presbyterian bodies. The appellant seceded from the Church, and has by his secession ceased to be a minister in connection with that Church. The rights of the persons entitled to beneficial interests in respect of the funds were not affected by the union of the Churches, or by the legislation impugned by the appellant. The only possible interest the appellant can have in the Temporalities Fund administered by the respondents is a claim to the payment of certain money out of the fund. The appellant does not allege that any such right has either been demanded by him or refused by the respondents.

LORD WATSON delivered the judgment of their Lordships (8):—

The first question raised in this appeal is, whether the Legislature of the Province of Quebec had power, in the year 1875, to modify or repeal the enactments of a statute passed by the Parliament of the Province of Canada in the year 1858 (22 Vict. cap. 66), intituled "An Act to incorporate the Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland."

The fund subject to the administration

(1) Law Rep. 6 P.C. 31.

(2) 44 Law J. Rep. P.C. 52; Law Rep. 6 P.C. 272.

(3) 49 Law J. Rep. P.C. 63; Law Rep. 5 App. Cas. 409.

(4) 4 Hare, 572.

(5) 2 De Gex & S. 122.

(6) 7 Hare, 445; 19 Law J. Rep. Chanc. 3.

(8) Lord Blackburn; Lord Watson; Sir Barnes Peacock; Sir Montague Smith; Sir Robert P. Collier; Sir Richard Couch; Sir Arthur Hobhouse.

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of the board constituted by the Act of 1858 consisted of a capital sum of 127,448*l.* 5*s.* sterling, which was paid by the Government of Canada under the following circumstances—The ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, were entitled, by virtue of certain Imperial statutes, to an endowment or annual subsidy out of the revenues derived from colonial lands, termed clergy reserves, and from moneys obtained by the sale of portions of these lands, supplemented, when necessary, from the Exchequer of Great Britain. But this connection between the Presbyterian Church and the State was at length dissolved. In 1853, an Act was passed by the British Parliament (16 Vict. c. 21), authorising the Legislature of the Province of Canada to dispose of the clergy reserves, and investments arising from sales thereof, but reserving to the clergy the annual stipends then enjoyed by them, and that during the period of their natural lives or incumbencies. In 1855, the Legislature of Canada, in exercise of the power thus conferred, enacted that all union between Church and State should cease, and that those ministers who were admitted to office after the 9th of May, 1853, being the date of the Act 16 Vict. c. 21, should receive no allowance from the Government. It was, however, provided that the rights of ministers entitled at that date to participate in the State subsidy should be reserved entire, power being given to the Governor-General in Council to commute the annual stipend payable to each individual so entitled for the capital value of such stipend, calculated at six per cent. on the probable life of the annuitant.

All the ministers interested consented to accept the statutory terms of commutation, and agreed to bring the amounts severally payable to them into one common fund, to be settled for behoof of the Presbyterian Church of Canada in connection with the Church of Scotland. In accordance with resolutions unanimously adopted by the Church in Synod assembled on the 11th of January, 1855, they further agreed that the interest of the fund should be devoted in the first instance to the payment of an annual stipend of 112*l.* 10*s.* to

each commutor, and that the claim next in order of preference should be that of ministers then on the roll, who had been admitted since the 9th of May, 1853. The arrangement thus effected was carried out by eight commissioners, duly appointed for that purpose, of whom three were ministers and five were laymen. They received payment of the commutation moneys to the amount already stated; and in order to provide for the management of the fund thus obtained, the Legislature of the Province of Canada, upon the application of the commissioners, passed the Act 22 Vict. c. 66.

By the first clause of the Act in question, the commissioners were, along with four additional members and their successors, declared to be a body politic and corporate, by the name of the "Board for the Management of the Temporalities Fund of the Presbyterian Church of Canada in connection with the Church of Scotland"; and the funds held by them as commissioners were vested in the board "in trust for the said Church," subject to the condition that the annual interest thereof should remain chargeable with the stipends and allowances payable to the parties entitled thereto, in terms of the arrangement under which the fund was contributed by the commutors. It was enacted that, at the first meeting of Synod held after the passing of the Act, three commissioners—one minister and two laymen—should retire from the board, and that seven new members, consisting of four ministers and three laymen, should be elected by the Synod. The board thus reconstituted was composed of six ministers and six laymen, and it was provided that at each annual meeting of the Synod held thereafter two ministers and two laymen were to retire by rotation, and that four new members—two clerical and two lay—should be elected in their stead. It was expressly enacted that all members of the board should also be members of the Presbyterian Church of Canada in connection with the Church of Scotland; and provision was made for filling up vacancies occasioned by the death or resignation of a member, by his removal from the Province of Canada, or by his leaving the communion of the said Church.

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In the year 1874, serious proposals had been made for an incorporative union between the Presbyterian Church of Canada in connection with the Church of Scotland, the Canada Presbyterian Church, the Church of the Maritime Provinces in connection with the Church of Scotland and the Presbyterian Church of the Lower Provinces. The old Parliament of the Province of Canada had by this time been abolished, and its legislative power had been distributed between the two Provincial Legislatures of Ontario and Quebec, and the new Parliament of the Dominion of Canada, under the provisions of the British North America Act, 1867. With the view of facilitating the contemplated union of the Churches, an Act of the Legislature of Quebec was passed in February, 1875 (38 Vict. c. 62), in order to remove any obstruction which might arise from the form and designation of the several trusts or acts of incorporation by which the property of the Churches was held and administered. By the 11th section of that Act, it was provided that, in the event of union taking place, the members then constituting the Board for Management of the Temporalities Fund, under the Act of 1858, should remain in office, and pay over the revenue to the persons previously entitled to it; that any revenue not required for that purpose should pass to and be subject to the disposal of the united Church; and that any part of the fund remaining after satisfying the claim of the last survivor of those entitled should belong to the Supreme Court of the united Church, and be applied to the aid of weak congregations. It was by the same clause enacted that vacancies occurring in the Temporalities Fund Board should not be filled up in the manner theretofore observed, but should be filled up in the manner provided by another Act of the Quebec Legislature.

This last-mentioned statute (38 Vict. c. 64), which received the assent of the Governor-General in Council upon the same day as the preceding, was passed with the professed object of amending the Act of the Parliament of the Province of Canada, 22 Vict. c. 66. It was thereby enacted that from the time when the union was effected, the annual allowances to

which they were previously entitled were to be continued by the Temporalities Board to ministers and probationers then on the roll of the Presbyterian Church of Canada in connection with the Church of Scotland, and these were to be paid, so far as necessary, out of the capital of the fund, and that any surplus of revenue or capital, after satisfying these charges, should be at the disposal of the united Church. Ministers and probationers of the Church interested in the Temporalities Fund, who might decline to become parties to the union, were, however, to retain all rights previously competent to them until the same lapsed or were extinguished. The constitution of the Board of Management was altered by the third and eighth clauses of the Act. The third clause is in these terms:—"As often as any vacancy in the Board for the Management of the said Temporalities Fund occurs, by death, resignation or otherwise, the beneficiaries entitled to the benefit of the said fund may each nominate a person, being a minister or member of the said united Church, or, in the event of there being more than one vacancy, then one person for each vacancy, and the remanent members of the said board shall thereupon, from among the persons so nominated as aforesaid, elect the person or number of persons necessary to fill such vacancy or vacancies, selecting the person or persons who may be nominated by the largest number of beneficiaries, but in the event of failure on the part of the beneficiaries to nominate as aforesaid, the remanent members of the board shall fill up the vacancy or vacancies from among the ministers or members of the said united Church." The eighth clause enacts that the 3rd section shall continue in force until the number of beneficiaries is reduced below fifteen, upon which occurrence the board is to be continued by the remanent members filling up vacancies from among the ministers or members of the united Church. By the 10th section it was declared that the Act should come into force as soon as a notice was published in the *Quebec Official Gazette* to the effect that the union had been consummated, and that the articles of union had been signed by the moderators of the respective Churches.

On the 14th day of June, 1875, the

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Synods of the four Churches met at Montreal, and in each a resolution was carried in favour of union. In the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland it was resolved, by a very large majority of its members, that the four Churches should be united, and form one assembly, to be known as "The General Assembly of the Presbyterian Church in Canada," and that the united Church should possess the same authorities, rights, privileges and benefits to which the Presbyterian Church of Canada in connection with the Church of Scotland was then entitled, excepting such as had been reserved by Acts of Parliament. The minority, which consisted of the appellant, the Rev. Robert Dobie, and nine other members, dissented from the action of the Synod, and protested that they, and those who might choose to adhere to them, remained and still constituted the Presbyterian Church of Canada in connection with the Church of Scotland.

On the 15th of June, 1875, the majority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, and the Synods of the other uniting Churches, met in general assembly, when the articles of union were signed by the Moderators of each of the four Churches; and thereupon one of the Moderators, with the consent and concurrence of the rest, declared the four Churches to be united in one Church, represented by that its first general assembly, to be designated and known as "The General Assembly of the Presbyterian Church in Canada." Notice of the union having been thus consummated was duly published in the *Quebec Official Gazette*.

After publication of the notice the constitution of the Board for Managing the Temporalities Fund was altered, and the fund administered, in conformity with the provisions of the Quebec Act, 38 Vict. c. 64. In December, 1878, the Rev. Robert Dobie, who, with the other members of the protesting minority of 1875, and their adherents, maintains that they alone represent and constitute the Presbyterian Church of Canada in connection with the Church of Scotland, instituted, by petition to the Superior Court for

Lower Canada, the proceedings in which the present appeal has been taken. The leading conclusions of the petition are to have it adjudged and declared—first, that the Legislature of Quebec had no power to alter the constitution of the board or the purposes of the trust created by the Canadian Act, 22 Vict. c. 66, and consequently that the administration of the trust as carried on in terms of the Provincial Act of 1875 is illegal; secondly, that the protesting minority of the Synod of 1875, and its adherents, are now the Presbyterian Church of Canada in connection with the Church of Scotland, and that certain ministers of the united Church, who were members of the majority, had, by reason of the union, forfeited all right to participate in the benefits of the Temporalities Fund; and, thirdly, to have an injunction against the board, as then constituted, acting in prejudice of the rights of the appellant, and others beneficially interested in the statutory trust of 1858. Upon the 31st of December, 1878, the appellant's application was heard before Mr. Justice Jetté, who made an order for summoning the respondents, and also issued an interim injunction, which the learned Judge dissolved, after fully hearing both parties, on the 31st of December, 1879, and at the same time dismissed the appellant's petition, with costs. This decision was, on appeal to the Court of Queen's Bench for Lower Canada, affirmed, in accordance with the opinions of the majority of the Judges.

The judgments of Mr. Justice Jetté in the Court of First Instance, and of Chief Justice Dorion and Mr. Justice Monk in the Court of Queen's Bench, are based exclusively upon the competency of the Quebec Legislature to pass the Act 38 Vict. c. 64, and the consequent validity of that statute. On the other hand Mr. Justice Ramsay and Mr. Justice Tessier were of opinion that the appellant was entitled to an injunction, on the ground that the Act 38 Vict. c. 64 was invalid, and that the majority of the Presbyterian Church of Canada in connection with the Church of Scotland had no power to communicate any interest in the Temporalities Fund of that Church to the religious

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bodies with whom they had chosen to unite themselves in 1875. Mr. Justice M'Cord was of opinion, with his brethren Mr. Justice Ramsay and Mr. Justice Tessier, that the Act of the Legislature of Quebec was *ultra vires*; but he held that the majority of the Presbyterian Church of Canada in connection with the Church of Scotland had undoubted power to admit into that Church, as members of it, the three religious bodies with whom they had entered into union. Consequently the learned Justice, though differing in opinion from his brethren Chief Justice Dorion and Mr. Justice Monk, agreed with them in result.

Whether the Legislature of Quebec had power to pass the Act 38 Vict. c. 64, is the question first requiring consideration, because, if it be answered in the affirmative, the case of the appellant entirely fails. The determination of that question appears to their Lordships to depend upon the construction of certain clauses in the British North America Act, 1867. There is no room, in the present case, for the application of those general principles of constitutional law which were discussed by some of the Judges in the Courts below, and which were relied upon in argument at the bar. There is really no practical limit to the authority of a supreme legislature except the lack of executive power to enforce its enactments. But the Legislature of Quebec is not supreme; at all events, it can only assert its supremacy within those limits which have been assigned to it by the Act of 1867.

The Act of the Parliament of the Province of Canada, 22 Vict. c. 66, was, after the passing of the British North America Act, 1867, continued in force within the provinces of Ontario and Quebec, by virtue of section 129 of the latter statute, which, *inter alia*, enacts that, except as therein otherwise provided, all laws in force in Canada at the time of the union thereby effected, shall continue in Ontario and Quebec as if the union had not been made. But that enactment is qualified by the provision that all such laws, with the exception of those enacted by the Parliaments of Great Britain, or of the United Kingdom of Great Britain and Ireland, shall be sub-

ject "to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective province, according to the authority of the Parliament or of that Legislature under this Act." The powers, conferred by this section upon the Provincial Legislatures of Ontario and Quebec, to repeal and alter the statutes of the old Parliament of the Province of Canada, are made precisely co-extensive with the powers of direct legislation with which these bodies are invested by the other clauses of the Act of 1867. In order, therefore, to ascertain how far the Provincial Legislature of Quebec had power to alter and amend the Act of 1858, incorporating the Board for the Management of the Temporalities Fund, it becomes necessary to revert to sections 91 and 92 of the British North America Act, which enumerate and define the various matters which are within the exclusive legislative authority of the Parliament of Canada, as well as those in relation to which the legislatures of the respective provinces have the exclusive right of making laws. If it could be established that, in the absence of all previous legislation on the subject, the Legislature of Quebec would have been authorised by section 92 to pass an Act in terms identical with the 22 Vict. c. 66, then it would follow that the Act of the 22nd Vict. has been validly amended by the 38 Vict. c. 64. On the other hand, if the Legislature of Quebec has not derived such power of enactment from section 92, the necessary inference is that the legislative authority required, in terms of section 129, to sustain its right to repeal or alter an old law of the Parliament of the Province of Canada, is in this case wanting, and that the Act 38 Vict. c. 64 was not *infra vires* of the Legislature by which it was passed.

The general scheme of the British North America Act, 1867, and, in particular, the general scope and effect of sections 91 and 92, have been so fully commented upon by this Board in the recent cases of *The Citizens Insurance Company of Canada v. Parsons*, and *The Queen Insurance Company v. Parsons* (9), that it is unnecessary to say anything further upon

(9) *Ante*, p. 11.

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that subject. Their Lordships see no reason to modify in any respect the principles of law upon which they proceeded in deciding these cases; but in determining how far these principles apply to the present case, it is necessary to consider to what extent the circumstances of each case are identical or similar.

The case of *The Citizens Insurance Company of Canada v. Parsons* (9) comes nearest, in its circumstances, to the present, as in that case the appellant Company was incorporated by, and derived all its statutory rights and privileges from, an Act of the Province of Canada; whereas *The Queen Insurance Company* (9) was incorporated under the provisions of the British Joint Stock Companies Act, 7 & 8 Vict. c. 110. In both cases the validity of an Act of the Legislature of Ontario was impeached on the ground that its provisions were *ultra vires* of a Provincial Legislature, and were not binding unless enacted by the Parliament of Canada. It was contended on behalf of the Citizen Insurance Company that the statute complained of was invalid in respect that it virtually repealed certain rights and privileges which they enjoyed by virtue of their Act of incorporation. That contention was rejected, and the decision in that case would be a precedent fatal to the contention of the appellant, if the provisions of the Ontario Act, 39 Vict. c. 31, and the Quebec Act, 38 Vict. c. 64, were of the same or substantially the same character. But upon an examination of these two statutes, it becomes at once apparent that there is a marked difference in the character of their respective enactments. The Ontario Act merely prescribed that certain conditions should attach to every policy, entered into or in force, for insuring property situate within the province against the risk of fire. It dealt with all corporations, companies and individuals alike who might choose to insure property in Ontario—it did not interfere with their constitution or *status*, but required that certain reasonable conditions should be held as inserted in every contract made by them. The Quebec Act, 38 Vict. c. 64, on the contrary, deals with a single statutory trust, and interferes directly with the constitution and privi-

leges of a corporation created by an Act of the Province of Canada, and having its corporate existence and corporate rights in the Province of Ontario as well as in the Province of Quebec. The professed object of the Act and the effect of its provisions is not to impose conditions on the dealings of the corporation with its funds within the Province of Quebec, but to destroy, in the first place, the old corporation and create a new one, and, in the second place, to alter materially the class of persons interested in the funds of the corporation.

According to the principles established by the judgment of this Board in the cases already referred to, the first step to be taken, with a view to test the validity of an Act of the Provincial Legislature, is to consider whether the subject-matter of the Act falls within any of the classes of subjects enumerated in section 92. If it does not, then the Act is of no validity. If it does, then these further questions may arise—namely, “whether, notwithstanding that it is so, the subject of the Act does not fall within one of the enumerated classes of subjects in section 91, and whether the power of the Provincial Legislature is or is not thereby overborne.”

Does then the Act 38 Vict. c. 64 fall within any of the classes enumerated in section 92, and thereby assigned to the Provincial Legislatures? Their Lordships are of opinion that it does not; and consequently that its enactments are invalid, and that the constitution and duties of the Board for managing the Temporalities Fund must still be regulated by the Act of 1858.

It was contended for the respondents that the Quebec Act of 1875 is within one or more of these three classes of subjects enumerated in section 92—

“(7). The establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the province other than marine hospitals.”

“(11). The incorporation of companies with provincial objects.”

“(13). Property and civil rights in the province.”

The most plausible argument for the respondents was founded upon the terms of Class (13), but it has failed to satisfy their

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Lordships that the statute impeached by the appellant is a law in relation to property and civil rights within the Province of Quebec.

The Quebec Act of 1875 does not, as has already been pointed out, deal directly with property or contracts affecting property, but with the civil rights of a corporation, and of individuals, present or future, for whose benefit the corporation was created and exists. If these rights and interests were capable of division according to their local position in Ontario and Quebec respectively, the Legislature of each province would have power to deal with them so far as they are situate within the limits of each. If, by a single Act of the Dominion Parliament, there had been constituted two separate corporations, for the purpose of working, the one a mine within the Province of Upper Canada, and the other a mine in the Province of Lower Canada, the Legislature of Quebec would clearly have had authority to repeal the Act so far as it related to the latter mine and the corporation by which it was worked.

The Quebec Act, 38 Vict. c. 64, does not profess to repeal and amend the Act of 1858, only in so far as its provisions may apply to or be operative within the Province of Quebec, and its enactments are apparently not framed with a view to any such limitation. The reason is obvious, and it is a reason which appears to their Lordships to be fatal to the validity of the Act. The corporation and the corporate trust, the matters to which its provisions relate, are in reality not divisible according to the limits of provincial authority. In every case where an Act applicable to the two provinces of Quebec and Ontario can now be validly repealed by one of them, the result must be to leave the Act in full vigour within the other province. But, in the present case, the legislation of Quebec must necessarily affect the rights and *status* of the corporation as previously existing in the Province of Ontario, as well as the rights and interests of individual corporators in that province. In addition to that, the fund administered by the Corporate Board, under the Act of 1858, is held in perpetuity for the benefit of the ministers and members of a Church having its local situation in both provinces, and the pro-

portion of the fund and its revenues falling to either province is uncertain and fluctuating, so that it would be impossible for the Legislature of Quebec to appropriate a definite share of the corporate funds to their own province without trenching on the rights of the corporation in Ontario.

These observations regarding Class (13) apply with equal force to the argument of the respondents founded on Classes (7) and (11). Even assuming that the Temporalities Fund might be correctly described as a "charity" or as an "eleemosynary institution," it is not in any sense established, maintained or managed "in or for" the Province of Quebec; and if the board, incorporated by the Act of 1858, could be held to be a "company" within the meaning of Class (11), its objects are certainly not provincial.

The respondents further maintained that the Legislature of Quebec had power to pass the Act of 1875, in respect of these special circumstances—first, that the domicile and principal office of the Temporalities Board are in the city of Montreal; and secondly, that the funds also are held or invested within the Province of Quebec. These facts are admitted on record by the appellant, but they do not affect the question of legislative power. The domicile of the corporation is merely forensic, and cannot alter its statutory constitution as a board in and for the provinces of Upper Canada and Lower Canada. Neither can the accident of its funds being invested in Quebec give the Legislature of that province authority to change the constitution of a corporation with which it would otherwise have no right to interfere. When funds belonging to a corporation in Ontario are so situated or invested in the Province of Quebec, the Legislature of Quebec may impose direct taxes upon them for provincial purposes, as authorised by section 92, subsection 2, or may impose conditions upon the transfer or realisation of such funds; but that the Quebec Legislature shall have power also to confiscate these funds, or any part of them, for provincial purposes, is a proposition for which no warrant is to be found in the Act of 1867.

Last of all it was argued for the respondents that, assuming the incompetency of either Provincial Legislature, acting singly,

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to interfere with the Act of 1858, that statute might be altered or repealed by their joint and harmonious action. The argument is based upon fact, because, in the year 1874, the Legislature of Ontario passed an Act (38 Vict. c. 75), authorising the union of the four Churches, and containing provisions in regard to the Temporalities Fund and its board of management, substantially the same with those of the Quebec Act, 38 Vict. c. 64, already referred to. It is difficult to understand how the maxim *juncta jvant* is applicable here, seeing that the power of the Provincial Legislature to destroy a law of the old Province of Canada is measured by its capacity to reconstruct what it has destroyed. If the Legislatures of Ontario and Quebec were allowed jointly to abolish the board of 1858, which is one corporation in and for both provinces, they could only create in its room two corporations, one of which would exist in and for Ontario and be a foreigner in Quebec, and the other of which would be foreign to Ontario but a domestic institution in Quebec. Then the funds of the Ontario corporation could not be legitimately settled upon objects in the Province of Quebec, and as little could the funds of the Quebec corporation be devoted to Ontario, whereas the Temporalities Fund is to be applied either in the Province of Quebec or in that of Ontario, and that in such amounts or proportions as the needs of the Presbyterian Church of Canada in connection with the Church of Scotland, and of its ministers and congregations, may from time to time require. The Parliament of Canada is, therefore, the only Legislature having power to modify or repeal the provisions of the Act of 1858.

On the assumption that the Legislature of Quebec had not power to alter the provisions of the Act 22 Vict. c. 66, the respondents still maintain that the appellant cannot prevail in the present action, in respect that he has not sufficient interest to entitle him to sue, and that, even if he has such interest, he is barred from challenging the Act of 1875, by the resolutions of the majority of the Synod, which are said to be binding upon him.

As regards the first of these objections, it is true that the appellant's right to an annuity from the Temporalities Fund is re-

served in its integrity by the Act which he impugns, and his own pecuniary interests are, therefore, not affected by its provisions. But the appellant is not a mere annuitant, and his right to an annual allowance does not constitute his only connection with the fund. He is likewise one of the commutators—one of the persons by whom the fund was contributed for the purposes of the Act 22 Vict. c. 66—and in that capacity he has a plain interest, and consequent right, to insist that the fund shall be administered in strict accordance with law.

The second objection is derived from the resolutions in favour of union carried by the majority of the Synod of the Presbyterian Church of Canada in connection with the Church of Scotland, upon the 14th of June, 1875. The Quebec Act, 38 Vict. c. 64, deals with the Temporalities Fund in conformity with these resolutions; and it is the contention of the respondents that the appellant is bound by the resolutions, and cannot, therefore, impeach the statute which gives effect to them. That is a startling proposition. If the Legislature of Quebec was incompetent to enact the statute of 1875, it is not easy to understand how the Synod could have power, either directly or indirectly, to validate that Act, or to set aside the enactments of 22 Vict. c. 66. The respondents do not, indeed, allege that the Synod was possessed of legislative powers, but they assert that the majority, by resolving that the fund, settled under the Act 22 Vict. c. 66, should in future be administered according to a scheme inconsistent with the provisions of that Act, bound all its members to acquiesce in that new course of administration, and to abstain from enforcing the statute law of the land. It may be doubted whether a Court of law would sustain such an obligation, even if it were expressly undertaken; but it is unnecessary to discuss that point, because their Lordships are of opinion that the respondents have failed to establish that the appellant, as a member of the Presbyterian Church in connection with the Church of Scotland, undertook any obligation to that effect.

Whether the appellant is bound, as alleged by the respondents, is, in this case,

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a question relating exclusively to civil rights, and must, therefore, be dealt with as matter of contract between him and the Synod or Church of which he was admittedly a member at the time when the resolutions in favour of union were carried. In the case of a non-established Presbyterian Church, its constitution, or in other words the terms of the contract under which its members are associated, are rarely embodied in a single document, and must, in part at least, be gathered from the proceedings and practice of its judicatories. Every person who becomes a member of a Church so constituted must be held to have satisfied himself in regard to the proceedings and practice of its Courts, and to have agreed to submit to the precedents which these establish. The respondents were, therefore, justified in referring to the minutes of the Synod from 1831 to 1875, for the purpose of shewing the extent of the power vested in majorities by the constitution of the Church. The minutes, which were relied upon by counsel for the respondents, afford abundant evidence to the effect that, in all matters which the Synod was competent to deal with and determine, the will of the majority as expressed by their vote was binding upon every member of the Synod, a proposition which the appellant did not dispute. But they contain nothing whatever to shew that, in cases where the administration of Church property was regulated by statute, the Synod ever asserted its right to set aside that legal course of administration, and to restrain dissentient members from challenging any departure from it.

Their Lordships are, therefore, of opinion that the appellant is entitled to have it declared that, notwithstanding the provisions of the Quebec Act of 1875, the constitution of the board and the administration of the Temporalities Fund are still governed by the Canadian Act of 1858, and that the respondent board is not duly constituted in the terms of that Act; and to have an injunction restraining the respondents from paying away or otherwise disposing of either the principal or income of the fund.

The appellant, in his application to the Court below, asks a declaration to the

effect that the fund in question is held by the respondents, "in trust, for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and for the benefit of the ministers and missionaries who retain their connection therewith, and who have not ceased to be ministers thereof, and for no other purpose whatever." It is obviously inexpedient to make any declaration of that kind. It would be a mere repetition of the language of the Act of 1858, by which the trust is regulated, and would decide nothing as between the parties to the present suit.

The appellant also seeks to have it declared that six reverend gentlemen who, at and prior to the union of 1875, were members of the Presbyterian Church of Canada in connection with the Church of Scotland, have ceased to possess that character, and that they have no right to the benefits of the Temporalities Fund; and he concludes for an injunction against the respondent corporation making any payment to them. Their Lordships are of opinion that these are matters which cannot be competently decided in the present action. Their decision depends upon the answer to be given to the question, Which Church or aggregate of Churches is now to be considered as being or representing the Presbyterian Church of Canada in connection with the Church of Scotland, within the meaning of the Act 22 Vict. c. 66? But the two Churches which appear from the record to have rival claims to that position are not represented in this action; and, of the six ministers whose pecuniary interests are assailed by the appellant, he has only called one, the Reverend Dr. Cook, as a respondent. That question between the Churches must be determined somehow before a constitutional board can be elected; and, unless the Dominion Parliament intervenes, there will be ample opportunity for new and protracted litigation. It cannot be determined now, because the appellant has not asked any order from the Court in regard to the formation of the new board, and has not made the individuals and religious bodies interested parties to this cause.

Substantial success being with the appellant, he must have his costs as against the respondents. But their Lordships are

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of opinion that neither the respondents' own costs, nor those in which they are found liable to the appellant, ought to come out of the trust fund, which they are holding and administering without legal title. The appellant's costs must therefore be paid by the members of the respondent corporation as individuals.

Their Lordships will, accordingly, humbly advise Her Majesty that the judgment under appeal ought to be reversed, and that the cause should be remitted to the Court of Queen's Bench, Lower Canada, with directions to that Court to give effect to the declarations recommended by this Board, and also to issue in the appellant's favour an injunction and decree for costs as directed by this Board.

Solicitors—Simpson, Hammond & Co., for the appellant; Bompas, Bishop & Dodgson, for respondents.

1882. { THE HON. JOHN CHASTEANEUF
Jan. 21. { (appellant) v. ANDRE HENRI
 { CAPEYRON AND OTHERS (re-
 { spondents).

Mauritius—British Ship—Transfer—Sale by Licitation—Merchant Shipping Act, 1854, s. 58.

The sale of a British ship by licitation is not a transmission of a ship "by any lawful means other than by a transfer, according to the provisions of this Act," within the meaning of section 58 of the Merchant Shipping Act, 1854, and a registrar of British ships is not bound to register as owners the purchasers of a ship upon such a sale.

This was an appeal from a judgment of the Supreme Court at the Mauritius.

The appellant was collector of customs, and, as such, registrar of shipping, at Port Louis, in the Mauritius.

The respondents were merchants at Port Louis, and naturalised British subjects.

On the 7th of March, 1877, the British barque *Barentin* was registered, at Port

Louis, in the books of the appellant as registrar of shipping, and Aimé Docinthe was at the time sole registered owner thereof. On the 28th of June, 1877, a mortgage of the barque to Henri Capeyron, Emile Coeffic and John Ferguson, jointly to secure \$8,000, with interest at nine per cent., was registered by the appellant.

Subsequently, one Eliacin François died, and among his papers was discovered a "contre lettre," as follows:—

"Reçu de M. E. François la somme de six mille deux cent huit roupies pour payer la barque *Barentin*, payable avec interets at 12 per cent.; je reconnais que M. E. François possède la moitié du *Barentin* bien que son nom ne figure pas sur le registre.

"Port Louis, 17 Janvier, 1877.

"(Signé) A. DOCINTHE."

By the law of the Mauritius this document had the effect of making Eliacin François joint owner with Aimé Docinthe of the *Barentin*.

One of the heirs of Eliacin François thereupon commenced a suit in the Supreme Court against Aimé Docinthe and the other heirs of Eliacin François for a sale by licitation of the barque, and on the 6th of November, 1878, such sale was ordered by the Court.

The sale took place before the Master of the Supreme Court in accordance with the rules of the Court, and the barque was sold to the respondents and the money was paid into Court.

The respondents then applied to the appellant to register their names as owners of the barque under the Merchant Shipping Act, 1854, and to erase the entry relating to the mortgage. The appellant refused to register the respondents as owners, on the ground that a bill of sale and declaration of ownership and the mortgage-deed, with a receipt for the mortgage-money indorsed thereon, were not produced, and that there had been no sufficient compliance with the provisions of the Merchant Shipping Act, 1854.

The Supreme Court, on the 13th of March, 1879, granted a rule calling on the appellant "to shew cause why, as collector of customs, he should not register

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in his books the British barque the *Barentin* under the name of Capeyron and Delange, of Port Louis, merchants, who had, according to a judgment of adjudication of the Master of this Court, purchased the same on a sale by licitation."

On the 17th of April, 1879, the Supreme Court ordered the appellant to register in his books the barque under the name of Messrs. Capeyron and Delange, upon the production of the memorandum of conditions under which the sale by licitation took place before the Master of the Supreme Court, together with the award of that officer, and upon Messrs. Capeyron and Delange making and signing the declaration and statement required by section 58 of the Merchant Shipping Act, 1854, and the form marked H in the schedule thereto. And it was further ordered that the appellant should erase from his books the inscriptions which appeared therein against the ship, the creditors having accepted to exercise their rights upon the sale price deposited with the Master of the Supreme Court.

From this order the appeal was brought.

The Attorney-General (Sir H. James), and A. L. Smith, for the appellant.—The transfer of a ship or of any share therein by sale must be by bill of sale in accordance with the Merchant Shipping Act, 1854, and not otherwise. The Registrar cannot be required to register any transfer by sale unless there be produced to him such bill of sale, and a declaration required by section 56 of the said Act. The production of a memorandum of the conditions of a sale by licitation, together with the award of the Master of the Supreme Court thereon, and of the declaration required by section 58 of the Merchant Shipping Act, 1854, is not a sufficient compliance with the provisions of the Act to entitle the party producing such documents to be registered as owner. The proceedings which took place with respect to the *Barentin* did not constitute a transmission of the property in the *Barentin*, or any share therein, to the respondents, within the meaning of section 58 of the Merchant Shipping Act, 1854.

They referred to *Curtis v. Perry* (1),

(1) 6 Ves. 739.

Ex parte Yallop (2), and *The Liverpool Borough Bank v. Turner* (3).

The respondents did not appear.

SIR BARNES PEACOCK delivered the judgment of their Lordships (4):—This is an appeal from a rule made by the Supreme Court of Mauritius, whereby it was ordered that the collector of customs at Port Louis in Mauritius do register in his books the British barque *Barentin* under the name of Messrs. Capeyron and Delange of Port Louis, and whereby it was further ordered that the said collector of customs do erase from his books the inscriptions which appear therein against the said ship, the creditors having accepted to exercise their rights upon the sale price deposited with the Master of the Court. That rule was obtained upon the application of Messrs. Capeyron and Delange, the respondents, who claimed as purchasers of the barque at a sale by licitation.

The appellant was the collector of customs at Port Louis, and in that capacity was registrar of British ships at that port. The barque was a British ship, and was registered at Port Louis in the name of Aimé Docinthe, a British subject, as the sole proprietor thereof, and in the names of Henry Capeyron, Emile Coeffic, and John Ferguson, as joint mortgagees, for £8,000, with interest at nine per cent.

The sale by licitation was ordered by the Supreme Court in a suit in which Marie Léonie Lilia François, as one of the heiresses of Mons. Eliacin François deceased, was plaintiff, and Aimé Docinthe, the registered owner of the barque, and the guardian and sub-guardian respectively of certain minors, heirs of the said Jean Eliacin François, were defendants.

In the order for the sale made in that suit it was directed to take place before the Master of the Court according to law, and in the conditions under which the sale was directed by the Court to take place, the sale was described as a judicial sale as regards the heirs François, and by licitation as regards Aimé Docinthe, of the

(2) 15 Ves. 60.

(3) 1 Jo. & H. 159; 29 Law J. Rep. Chanc. 827.

(4) Sir Montague Smith; Sir Robert P. Collier; Sir B. Peacock; Sir Richard Couch; Sir Arthur Hobhouse.

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barque *Barentin*, therein described as belonging for one-half to the estate and succession of the late Jean Eliacin François, and the other half to Aimé Docinthe. Neither the judgment of the Supreme Court, by which the sale was ordered, nor the grounds upon which it was based, are before their Lordships. The registrar was ordered to register the barque under the names of the respondents upon the production of the memorandum of conditions under which the sale by licitation took place before the Master, together with the award of that officer, and upon the making and signing by the respondents of the declaration and statements required by section 58 of the Merchant Shipping Act, 1854, and by form marked H in the schedule thereto.

It would be unnecessary, even if their Lordships had the means for so doing, to enquire into the validity of the order for sale; that order was binding upon the parties to the suit, and the substantial question to be determined in this appeal is, whether the registrar of British ships was bound to register as owners of the barque the purchasers under the award of the Master made upon the sale by licitation. Their Lordships have had the benefit of the arguments of the learned Attorney-General and Mr. Smith on behalf of the appellant, but the respondents did not appear. Their Lordships have carefully considered the case, and have arrived at the conclusion that the registrar was right in refusing to register the respondents as owners of the barque, and to erase from his books the inscriptions contained in the register against the barque in the names of the mortgagees.

The determination of the question, so far as it relates to the obligation on the part of the registrar to register the respondents as owners, depends principally upon the proper construction of sections 55 and 58 of the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104).

Section 55 enacts that a registered ship, or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale, and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such

other description as may be sufficient to identify it to the satisfaction of the registrar, and shall be according to the form marked E in the schedule to the Act, or as near thereto as circumstances permit, and shall be executed by the transferrer in the presence of, and be attested by, one or more witnesses. By section 57 it is enacted that every bill of sale for the transfer of any registered ship, or of any share therein, when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration required by section 56 to be made by a transferee, and that the registrar shall thereupon enter in the register-book the name of the transferee as owner of the ship or share comprised in such bill of sale. By section 58 it is enacted that if the property in any ship, or in any share therein, becomes transmitted in consequence of the death or bankruptcy or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, *or by any lawful means other than by a transfer according to the provisions of this Act*, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, made in the form marked H in the schedule to the Act, and containing the statements thereinbefore required to be contained in the declaration of a transferee, or as near thereto as circumstances permit, and in addition a statement describing the manner in which and the party to whom such property has been transmitted.

The form marked H contains forms applicable to the cases of bankruptcy, insolvency, death and marriage respectively, but no form applicable to any other means of transmission. In each of these cases, the marriage, the bankruptcy or insolvency, or the death of the registered owner has to be declared, and by section 59 the declaration has to be accompanied with the proof required by that section of the transmission by such means of the property in the ship or in the share thereof *from the registered owner* to the person entitled by such transmission; and then, by section 60, it is enacted that the registrar, upon the receipt of such declaration

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so accompanied as aforesaid, shall enter the name or names of the person or persons entitled under such transmission in the register-book as the owner or owners of the ship or share therein in respect of which such transmission has taken place, and such persons, if more than one, shall, however numerous, be considered as one person only as regards the rule thereinbefore contained relating to the number of persons entitled to be registered as owners. The latter portion of the section refers to the enactment in section 37, that, subject to the provisions with respect to joint-owners or owners by transmission, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship.

So strictly were the provisions of the earlier statutes relating to the transfer of British ships interpreted, that it was held by Lord Eldon that the doctrine of implied trust in a Court of equity could not be extended to the case of a British registered ship where the title accrued *by an act of the parties* other than a transfer made in accordance with the provisions of the Merchant Shipping Acts—see *Ex parte Yallop* (2) and *Curtis v. Perry* (1). His Lordship, however, drew a clear distinction between such a case and a trust implied by law not arising out of an act in which the parties claiming the beneficial interest had joined.

In the case of *Curtis v. Perry* (1), his Lordship, at p. 746, said, "I desire it to be distinctly understood that I give no opinion upon the effect of these two Acts of Parliament in cases of trusts implied by law and not arising out of an act in which the contracting parties join." And again, in *Ex parte Yallop*, "The case of *Curtis v. Perry*, though it does not rule this case, furnishes a strong intimation of my opinion that the distinction between trusts by operation of law *unconnected with acts of the persons claiming interests*, and trusts, in a sense perhaps by operation of law, *but arising out of acts of the parties not regulated by the Act of Parliament*, is founded on principle."

The decision in *Ex parte Yallop* (2) was followed in the case of *The Liverpool Borough Bank v. Turner* (3), decided by Lord

Hatherley, then Vice-Chancellor Wood, upheld on appeal by Lord Campbell in 1 *Maritime Law Cases*, p. 21. In that case the Vice-Chancellor pointed out a distinction between the Merchant Shipping Act, 1854, and the former statutes—namely, that in the former statutes the Legislature declared that an unregistered contract should have no effect at law or in equity, and that those words were left out in the Act of 1854, and this after they had been the subject of express decision (p. 171). But, notwithstanding that distinction, it was held that an unregistered contract to assign an interest in a ship, when required as a security for past and future advances, was inoperative even in equity. In his judgment in that case Vice-Chancellor Wood referred to section 58 with reference to the contention that the Legislature, in the Act of 1854, intended to depart from its general policy of requiring all transfers to be effected by the specified methods; he said, "The phrase which strikes me as the strongest in favour of such a contention is that which is found in the 58th section, which speaks of the transmission of the property in a ship by death, bankruptcy, marriage, or by any lawful means other than by a transfer according to the provisions of this Act. That is certainly a very strong expression, but the phrase must be looked at in connection with the context, because the transmission is directed to be authenticated by a declaration in the form marked H in the schedule which contains forms of statement that the owner is a natural born subject, and also certain forms applicable to the "transmission by death, marriage, bankruptcy and insolvency." Then, after referring to sections 59 and 60, his Honour proceeded—"It is clear that these provisions cannot possibly apply to a contract for the sale of a ship, and, whatever may have been pointed at by the words 'transmission by any lawful means other than by a transfer according to the provisions of this Act,' it could not have been intended that any person should be at liberty to go to the registrar with a contract for sale in his possession, and insist upon having it registered."

The above decisions are referred to not

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for the purpose of shewing that a beneficial interest cannot now be created by implication or by a contract neither registered nor made according to the provisions of the Merchant Shipping Act, 1854, but for the *dicta* of and the principles laid down by the learned Judges in construing the earlier statutes. The law has been altered by the 25 & 26 Vict. c. 3. s. 63, passed since those cases were decided. By that section it is enacted that the expression "beneficial interest," whenever used in the second part of the principal Act (that is, the Act of 1854), includes interests arising under contract and other equitable interests, and the intention of the said Act is that without prejudice to the provisions contained therein for preventing notice of trusts from being entered in the register book, or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said Act on registered owners and mortgagees, and without prejudice to the provisions contained in the said Act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interests therein in the same manner as equities may be enforced against them in respect of any other personal property.

It may be assumed, for the purpose of argument, that as regards ordinary movables the award of the Master to a purchaser on a sale by licitation vests the property in him without any deed or other conveyance, and that according to the law of Mauritius there is no distinction between legal and equitable estates. But the transfer of a British ship is not governed by the rules applicable to movables in general, but by the express provisions of the Merchant Shipping Acts, which make a clear distinction between the legal estate and mere beneficial interests in a British ship.

It must be borne in mind that, by section 43 of the Merchant Shipping Act, 1854, it is enacted that no notice of a trust, express, implied or constructive, shall be entered in the register book, or receivable by the registrar. It may be admitted that the sale by licitation without

a conveyance by bill of sale created a beneficial interest in the purchasers; but the question is not whether the sale by licitation created a trust for or a beneficial interest in the purchasers, but whether it created such an interest in them as rendered it compulsory upon the registrar to register them as owners. That still depends upon the proper construction of the 58th section of the Act of 1854.

Their Lordships are of opinion that the words "or by any lawful means other than by a transfer according to the provisions of this Act" in that section must be restricted, and construed as comprehending only transmissions of the same nature as those previously enumerated in the section. If this were not so, they would include any assignment by a registered owner not made according to the provisions of section 55 of the Act of 1854, and would in effect nullify the provisions of that section.

It must be observed that there is a clear distinction made in sections 55 and 58 between a "transfer" and a "transmission"; the same distinction is also made in sections 73 and 74, and the form L in the schedule as regards the transfer and transmission of mortgages.

In their Lordships' opinion, a transmission, in order to be of the same nature as a transmission by bankruptcy, insolvency, death or marriage, must be a transmission by operation of law, unconnected with any direct act of the party to whom the property is transmitted, and that a transmission to a purchaser at a sale by licitation is not such a transmission, inasmuch as it is connected with and is the direct consequence of an act of the person who applies for the order, and another act of the person who purchases, and to whom the property is transmitted. This view of the case is supported by section 103, clause 3, when read in conjunction with section 55; for if a transfer by a judicial sale to a purchaser not qualified to be the owner of a British ship were a transmission, there would be no reason for placing him in a different position from a purchaser under section 55. In the present case the purchasing and paying the purchase-money for the ship by the purchasers was the act upon which

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the Master's award was based, and, admitting that the adjudication and award of the Master passed a beneficial interest to the purchasers without any further conveyance, the interest was not such as to entitle them to be registered as owners.

Further, it may be remarked that, so long as Docinthe was registered as sole owner, the interest of the heirs François could not have been such as would have entitled a purchaser of it under a judicial sale to be registered as the owner of it.

In the case of *The Sisters*, heard before the High Court of Admiralty in 1804 (*vide Robinson's Admiralty Reports*, vol. v., p. 159), Lord Stowell observed: "According to the ideas which I have always entertained on this question, a bill of sale is the proper title to which the maritime Courts of all countries would look. It is the universal instrument of transfer of ships in the usage of all maritime countries, and in no degree a peculiar title-deed or conveyance known only to the law of England. It is what the maritime law expects, what the Court of Admiralty would, in its ordinary practice, always require, and what the Legislature of this country has now made absolutely necessary, with regard to British subjects, by the regulations of the statute law." This, no doubt, was before the introduction of the transmission section, but the remark is applicable to all cases in which ships are transferred by purchase and sale, by whomsoever the sale is effected.

It may be stated, in corroboration of the view of the case taken by their Lordships, that upon a sale of a ship in execution of a judgment the sheriff passes the property by bill of sale, and their Lordships understand that, although upon the sale of a ship by order of the High Court of Admiralty in a judgment *in rem.* the vessel becomes the property of the purchaser, it is the practice for the purchaser to procure a bill of sale from the marshal or commissioner, in order to entitle him to be registered in accordance with the Merchant Shipping Act, 1854.

The above view of their Lordships renders it almost unnecessary to say a word as to the order to erase the names of the mortgagees from the register, except

that it is clearly invalid; but it may be pointed out that the mortgagees were no parties to the proceedings for sale by licitation; that that proceeding was not a judgment *in rem.*; that the mortgagees were not called upon by the rule *nisi* to shew cause against it; and that the only consent on the part of the mortgagees to forego their rights against the ship, and to exercise their rights upon the sale price, was upon the hearing of the rule *nisi*. Such a consent was not an act which would have justified the registrar in making an entry on the register under section 68 of the Act of 1854, that the mortgage had been discharged; still less did it render it obligatory upon him, or even authorise him, to erase the mortgages from the register. Such a proceeding, even if the mortgages had been discharged in the manner pointed out by the Act, would have been wholly unwarranted. There is no provision in the Acts which authorises the registrar to erase entries of mortgages upon their being discharged, and it would be in violation of the principle of the Registration Acts to erase any entries which appear on the face of the register.

For the above reasons their Lordships will humbly advise Her Majesty to rescind the order above mentioned, and to order that the rule to shew cause of the 13th of March, 1879, be discharged, with costs.

The respondents must pay the costs of this appeal.

Solicitor—Solicitor for the Treasury, for appellant.

1882. { THE WESTERN COUNTIES RAILWAY
Feb. 22. { COMPANY (appellants) v. THE
 { WINDSOR AND ANNAPOLIS RAIL-
 { WAY COMPANY (respondents).

Nova Scotia—British North America Act, 1867, section 108—Effect of—Provincial Railways—Statutes, Construction of—Vested Rights affected by Statute.

The British North America Act, 1867, by section 108, vests all railways belonging to the Province of Nova Scotia in the Dominion of Canada. Prior to the passing of the above Act, the respondents entered into an agreement with the railway authorities in Nova Scotia to work a railway in that province, and after the passing of the Act this agreement was adopted by the Government of Canada, and the railway continued to be worked by the respondents; but in consequence of default in such working, an Act was passed by the Dominion Parliament authorising the transfer of the railway to the appellants:—Held, that section 108 of the Act of 1867 vested the railways of the Province in the Dominion subject to existing contracts, and that in the absence of express statutory provision, the railway when transferred was still subject to the contract entered into with the respondents.

This was an appeal from a judgment of the Supreme Court of Nova Scotia affirming a judgment of the Judge in equity in that Court, in a suit in which the respondents were plaintiffs and the appellants were defendants.

The object of the suit was to obtain a declaration of the respondents' title to a railway in Nova Scotia, called the "Windsor Branch Railway," and to recover possession of the same.

The facts of the case were as follows:—By a statute of Nova Scotia, 17 Vict. c. 1, provision was made for the construction and maintenance of a railway from Halifax to the frontier of New Brunswick, with branch lines.

In pursuance of another Act of the colony, 28 Vict. c. 23, an agreement was on the 22nd of November, 1866, made between the Chief Commissioner of Rail-

ways in the colony and the respondents for the construction of the railway from Windsor to Annapolis; and it was further agreed that, prior to the opening of the railroad, a traffic arrangement should be made between the respondents and the Provincial Government.

The respondent company was incorporated by an Act of the Legislature of Nova Scotia, 30 Vict. c. 36, for the purpose of taking over and carrying out this agreement.

By the British North America Act, 1867, which came into force on the 1st of July, 1867, it was provided by section 108 that "the public works and property of each province enumerated in the 3rd schedule to the Act shall be the property of Canada." The 3rd schedule included railways.

The respondents constructed the railway from Windsor to Annapolis, and opened the same for traffic on the 18th of December, 1869.

On the 22nd of September, 1871, the Government of Canada, professing to act under the authority of the Act of Incorporation, 30 Vict. c. 36, executed an agreement with the respondents to work the branch railway for a term of twenty-one years under certain terms and conditions.

The respondents failed to perform these conditions, but they continued to work and manage the railway.

On the 26th of May, 1874, an Act was passed by the Parliament of Canada, 37 Vict. c. 16, authorising the transfer of the branch railway to the appellants upon condition that they would extend the railway from Annapolis to Yarmouth. On the 1st of August, 1877, the Government of Canada took possession of the railway and transferred it to the appellants.

The respondents on the 10th of October, 1877, commenced the suit against the appellants in the Supreme Court of Nova Scotia, praying that it might be decreed and declared that the agreement of the 22nd of September, 1871, was in no way cancelled, and that it might be declared that the Act of the Dominion Parliament, 37 Vict. c. 16, in no way affected the rights of the respondents.

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The appellants demurred to the Bill. The demurrer was overruled with costs.

The appellants appealed from this judgment to the Supreme Court, which Court gave judgment dismissing the appeal.

From this judgment this appeal was brought.

Benjamin, Q.C., and *G. Hardy*, for the appellants.—Under the provisions of the British North America Act, 1867, the railway became vested in and under the jurisdiction of the Dominion of Canada, and the Dominion Parliament had absolute control thereof. The Parliament of Canada had full legislative authority to deal with the railway as fully as the Legislature of Nova Scotia had prior to Confederation. The jurisdiction of the Parliament of Canada over the railway was supreme and sovereign, and in the exercise of its supreme and sovereign power it could and did vest possession of the railway in the appellants, and it could and did extinguish the then existing rights (if any) of the respondents.

Davey, Q.C., *Bompas, Q.C.*, and *Beaumont*, for the respondents.—The Minister of Public Works had power to enter into the agreement of the 22nd of September, 1871, both under his general statutory authority and as carrying out the provisions of the respondents' act of incorporation. Such agreement is still in force. The statute of 1874 conferred no rights upon the appellants until the completion of their line, and then only such rights as the Dominion Government possessed, and did not deal with or affect the rights of the respondents. If the statute of 1874, upon its true construction, deprived the respondents of their rights in the Windsor branch conferred upon them by their act of incorporation and the agreement of 1871, the statute was *ultra vires* the Dominion Legislature and void. The Dominion Government, having provided for the working of the railway until the completion of the appellants' line, could not subsequently deprive the respondents of the rights they had so acquired for valuable consideration. They referred to *Ward v. Scott* (1), *Barrington's Case* (2), *The Hammersmith*

Railway Company v. Brand (3) and *The Metropolitan Asylum District v. Hill* (4.)

LORD WATSON delivered the judgment of their Lordships (5):—

In the present case, each of the contending parties claims the exclusive right to possess and work the Windsor Branch Railway, in the Province of Nova Scotia. This line was originally constructed as one of the public railways of the province, and was intended to be part of a general system connecting Halifax and other towns of importance with the frontier of the Province of New Brunswick. After the passing of the British North America Act, 1867, and in accordance with its provisions, all railways belonging to the Province of Nova Scotia, including the line in question, passed to and became vested in the Dominion of Canada.

The Chief Commissioner of Railways for Nova Scotia, acting under authority conferred upon him by the Provincial Act, 28 Vict. c. 23, entered, in November, 1866, into an agreement with Messrs. Punchard, Barry & Clark, of London, whereby those gentlemen became bound to make a railway, which was to be their own property, from Windsor, one of the termini of the branch in question, to Annapolis. By that agreement it was *inter alia* provided that, before the new line from Windsor to Annapolis was opened by Messrs. Punchard, Barry & Clark, a traffic arrangement was to be made between them and the Provincial Government "for the mutual use and enjoyment of their respective lines of railway between Halifax and Windsor, and Windsor and Annapolis, including running powers, or for the joint operation thereof, on equitable terms to be settled by two arbitrators, to be chosen by the parties in case of difference."

By an Act of the Legislature of Nova Scotia, passed upon the 7th of May, 1867 (30 Vict. c. 36), Messrs. Punchard, Barry & Clark were constituted a body corporate,

(3) 38 Law J. Rep. Q.B. 265; Law Rep. 4 H.L. Cas. 171.

(4) 50 Law J. Rep. Q.B. 353; Law Rep. 6 App. Cas. 193.

(5) Lord Blackburn; Lord Watson; Sir Barnes Peacock; Sir Robert P. Collier; Sir Arthur Hobhouse.

(1) 3 Campb. 284

(2) 8 Coke, 148 a.

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by the name of the Windsor and Annapolis Railway Company; and the agreement of November, 1866, between them and the Chief Commissioner of Railways was, by the same Act, adopted and confirmed.

The Windsor Branch Railway became the property of the Dominion upon the 1st of July, 1867, being the day appointed by Her Majesty, in terms of section 4 of the British North America Act, for the provisions of that Act coming into operation. And, on the 22nd of September, 1871, the Government of Canada, as then owners of the railway, and in implement of the obligation to make a "traffic arrangement" which is contained in the agreement of November, 1866, entered into a new agreement with the respondents, the Windsor and Annapolis Railway Company.

It is unnecessary to consider in detail the whole terms of the agreement of 1871. Its provisions, so far as bearing upon the present case, are in substance these: The exclusive use and possession of the Windsor Branch Railway was made over to the respondent company, with running powers over the trunk line, also belonging to the Dominion Government, which connects the Windsor Branch with Halifax. The Dominion Government was to maintain the Windsor Branch as well as the trunk line in workable condition, whilst the respondent company undertook to render and adjust regular monthly accounts of all traffic carried by them over these lines, and to pay to the Government, not later than twenty-one days from the end of each month, one-third of their gross earnings from such traffic. The company also undertook to provide rolling stock, and to run a certain number of trains daily, with stated hours of departure and arrival, and to conduct their business and traffic with impartiality and fairness. No right of re-entry was reserved in case of the company's failure punctually to make payment of one-third of their earnings, but it was stipulated (Art. 19) that "in the event of the company failing to operate the railways between Halifax and Annapolis, then this agreement shall terminate, and the authorities may immediately proceed to operate the railway between Halifax and Windsor as they may deem

proper and expedient." Last of all, it was provided that the agreement should take effect upon the 1st of January, 1872, and continue for twenty-one years, and be then renewed on the same conditions, or upon such other conditions as might be mutually agreed on.

In accordance with the foregoing agreement, the respondent company in January, 1872, took possession of and worked the Windsor Branch line. Shortly afterwards the monthly payments due to Government fell into arrear, but these arrears were paid in full in November, 1872, in consequence of a threat that Government would resume possession of the railway. During the following year the company again failed to make payment of the third of the traffic receipts which were due to the Dominion Government, who intimated that, unless all arrears were paid up on or before the 1st of October, 1873, they would resume possession.

On the 22nd of October, 1873, an Order of the Privy Council of Canada was passed, approving of a report, dated the 21st of the same month, from the Minister of Public Works, "stating that the Windsor and Annapolis Railway Company had failed to operate the railway known as the Windsor Branch, mentioned in Order in Council of the 22nd of September, 1871, and to comply with the other terms and conditions of that Order in Council, and now owe 30,000 dollars to the Government of Canada, and though repeatedly called upon to pay have failed to do so, and recommending that, inasmuch as the said company have failed to operate one of the railways between Halifax and Annapolis, the Government of Canada, known as 'the authorities' by the said Order in Council, do proceed immediately to operate the railway between Halifax and Windsor."

On the same day (the 22nd of October, 1873), the Governor General in Council, subject to the sanction of Parliament, approved of a proposal made by the appellant company for a transfer to them of the Windsor Branch Railway, upon these conditions:—

"First. The said company will undertake to receive the said railway and appurtenances on the first day of December, Anno

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Domini eighteen hundred and seventy-three, and from that date to work it efficiently and keep the same in repair at their own proper costs and charges, collecting, receiving and appropriating to their own use all the tolls and earnings of the same.

"Secondly. That on the completion of the Western Counties Railway from Yarmouth to Annapolis (now in course of construction), the said railway and appurtenances, from Windsor to the trunk line, shall be and become absolutely the property of the said Western Counties Railway Company.

"Thirdly. That, in consideration of the premises, the said company hereby engage to prosecute the work of building the railway from Yarmouth to Annapolis, and complete the same with all reasonable despatch."

On the 30th of October, 1873, the Governor General in Council approved, subject as before to Parliamentary sanction, of a further proposal made by the appellant company in these terms:—

"First. That the Western Counties Railway Company shall carry, free of charge, all passengers holding Government tickets, on all their passenger trains running between Halifax and Windsor Junction.

"Secondly. That the said company, or their agents or assigns, shall have running powers over the Intercolonial Railway, between Halifax and Windsor Junction, with such privileges as have been hitherto granted in the agreement with the Windsor and Annapolis Railway."

On the 26th of May, 1874, an Act was passed by the Parliament of Canada (37 Vict. c. 16), entitled, "An Act to authorise the transfer of the Windsor Branch of the Nova Scotia Railway to the Western Counties Railway Company." The proposals of the appellant company, which were provisionally agreed to by the Orders in Council of the 22nd and 30th of October, 1873, respectively, were set forth at length in schedules A and B appended to the Act, and are referred to and sanctioned by the enacting clauses. It will be necessary, hereafter, to examine this statute more closely, because the appellants' case is mainly founded upon its provisions, and

the parties are widely at variance as to their true import and effect.

Upon the 22nd of June, 1875, the respondent company entered into an agreement with the Minister of Public Works of Canada, by which the company, on the one hand, undertook to alter the gauge of the Windsor and Annapolis Railway from five feet six inches to the standard gauge of four feet eight and a half inches, to deliver to the minister a certain quantity of locomotives and other broad gauge plant, and to release all claims and demands against the Government of Canada up to the 1st day of July, 1875. On the other hand it was agreed that, upon the change of gauge being effected, all arrears of traffic receipts, due by the company to the Government, which had accrued up to the 1st of January, 1875, should be discharged, and that the Minister of Public Works should then deliver to the company a like quantity of narrow gauge engines and rolling stock. It was further stipulated that the company should, on or before the 31st of July, 1875, make payment of the third of gross earnings which had accrued after the 1st of January, 1875, and that the proportion of such traffic earnings due to the Government, and thereafter accruing, should "be paid monthly, as provided in the said agreement under which the company hold and work the branch as aforesaid, which (except as aforesaid) is hereby declared to be in all respects in full force and effect." In pursuance of this agreement the respondent company altered the gauge of their line, and regularly made the payments therein stipulated, and an exchange of engines and rolling stock was also made in terms thereof.

The respondent company remained in full possession of the Windsor Branch line, and continued to work the same, from the beginning of the year 1872 until the 1st of August 1877. On that date the Dominion Government took possession of the Windsor Branch line; and on the 24th of September following transferred the possession of it to the appellant company under the agreement scheduled to the Canadian Act of the 26th of May, 1874.

The respondent company, upon the 10th of October, 1877, filed a bill in the Supreme Court of Nova Scotia against the appellant

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company, wherein it was prayed, *inter alia*, that the latter company should be ordered to deliver up possession to them of the Windsor Branch Railway. The appellant company appeared and demurred to the bill, but their demurrer was, on the 11th of March, 1878, overruled by the Judge in equity, and an appeal taken against that judgment was dismissed by the Supreme Court sitting in Banco upon the 29th of August, 1878, Mr. Justice James alone dissenting. The cause then returned to the Judge in equity, and after the appellant company had put in their answer, and evidence had been adduced by both parties, Mr. Justice Ritchie, upon the 1st of March, 1880, gave judgment in favour of the respondent company with costs; and his judgment was affirmed with costs by the Supreme Court of Nova Scotia, on the 6th of April, 1881, Mr. Justice James being again the only dissentient Judge.

Some of the points, unsuccessfully maintained by the appellant company in the Courts of Nova Scotia, were not pressed in the argument addressed to this Board. The two propositions seriously maintained by the appellants were these—first, that the Act passed by the Parliament of Canada upon the 26th of May, 1874 (37 Vict. c. 16), extinguished all right and interest which the respondent company had in the Windsor Branch Railway, by virtue of the agreement of the 22nd of September, 1871, and transferred to the appellant company a present right to the exclusive possession, and a future right to the exclusive property, of the said railway; and secondly, that the Parliament of Canada had, under the provisions of the British North America Act, 1867, ample legislative authority to take away without compensation, any right in or relating to the railway which might be vested in the respondent company, and to transfer it to the appellants. It is not disputed that, if either of these propositions be not well founded, the appellants' case must fail.

The 108th section of the British North America Act, 1867, which must be read in connection with the third schedule of the Act, had the effect of transferring, upon the 1st of July, 1867, to the Dominion of Canada all railways which were the property of the Province of Nova Scotia.

Their Lordships are of opinion that it had not the effect of vesting in Canada any other or larger interest in these railways than that which belonged to the province at the time of the statutory transfer. Accordingly, the Dominion took the property of the Windsor Branch Railway, subject to the same obligation by which the right of the Provincial Government was affected—namely, to enter into a traffic arrangement with the respondent company, in terms of the agreement confirmed by the Provincial Statute of the 7th of May, 1867; and it was in pursuance of that obligation that the Dominion Government entered into the agreement of the 22nd of September, 1871. The agreement thus made was valid, and must continue to receive effect until it has been terminated by the default of the respondent company, by the mutual consent of parties, or by the action of a competent Legislature.

As already stated, the appellant company maintains that the agreement in question has been put an end to by the Act of a competent Legislature. In dealing with that contention, it will be convenient to consider, in the first place, whether, on the assumption that the Dominion Parliament had authority to enact the 37 Vict. c. 16, the provisions of that Act do extinguish those rights in relation to the Windsor Branch, which are conferred upon the respondent company by the agreement of 1871.

The proposals, or provisional agreements, which are scheduled to the Act 37 Vict. c. 16, contain two distinct stipulations, the one relating to the possession and use, and the other to the property, of the Windsor Branch Railway. By the first, the appellant company "undertake to receive the said railway and appurtenances on the first day of December, Anno Domini eighteen hundred and seventy-three," and to work it efficiently thereafter. Although the company undertake to receive, there is no corresponding obligation laid upon the Government to give them possession of the railway, either upon the 1st of December, 1873, or at any other specified date. By the second of these stipulations it is provided that, upon the completion of the Western Counties Railway, then in course of construction, from Yarmouth to Anna-

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polis, the Windsor Branch Railway and its appurtenances shall be and become the absolute property of the appellant company. The Governor General, with advice of his Council, would probably have been entitled, by virtue of the administrative powers conferred upon him by the 12th section of the British North America Act, 1867, to make a valid agreement in regard to the possession and working of the line; but it is, at least, very doubtful whether he would have had the right to alienate the property of the line, without the sanction of the Dominion Parliament. Be that as it may, the Parliament did interpose upon the 26th of May, 1874, to the effect, the appellants say, of destroying the previously subsisting agreement between the Government and the respondent company.

Neither in the Act 37 Vict. c. 16, nor in the schedules appended to it, is mention made of the agreement of the 22nd of September, 1871, or indeed of any right or interest of the respondent company in the Windsor Branch Railway. The canon of construction applicable to such a statute is that it must not be deemed to take away or extinguish the right of the respondent company, unless it appear, by express words, or by plain implication, that it was the intention of the Legislature to do so. That principle was affirmed in *Barrington's Case* (2), and was recognised in the recent case of *The River Wear Commissioners v. Adamson* (6). The enunciation of the principle is, no doubt, much easier than its application. Thus far, however, the law appears to be plain—that, in order to take away the right, it is not sufficient to shew that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right; it must also be shewn that the Legislature have authorised the thing to be done, at all events, and irrespective of its possible interference with existing rights.

It appears to their Lordships that there is nothing in the provisions of the Dominion Act, 37 Vict. c. 16, to warrant the inference that the Parliament of Canada must have intended thereby to enact that immediate possession of the Windsor Branch, for the purpose of working it, was

(6) 47 Law J. Rep. Q.B. 193; Law Rep. 2 H.L. App. 743.

to be given to the appellant company, under the agreements scheduled, even though there should be a subsisting arrangement for the working of the line. Indeed, the contrary appears from the 2nd section of the Act, to which reference will be made hereafter.

The preamble of the Act recites the proposed transfer of the railway to the appellant company, and also a resolution of the Canadian House of Commons, of date the 23rd of May, 1873, to the effect that the Government should be authorised to enter into negotiations for the transfer of the Windsor Branch to some reliable association or company, "upon condition that such company extend the railway from Annapolis to Yarmouth." It makes no reference to any right belonging to or asserted by the respondent company, nor does it refer to that part of the scheduled agreement which relates to the willingness of the appellant company to undertake to receive the railway and appurtenances upon the 1st of December, 1873. It is impossible, therefore, to gather from the terms of the preamble an intention to terminate at once any temporary right of possession which might belong to the respondent company. The transfer of the railway was obviously not expected to take place at once. It was dependent upon a condition which might never be fulfilled, and which admittedly has not yet been fulfilled—namely, the completion of the line from Yarmouth to Annapolis by the appellant company. Besides, the transfer of the property of the railway is nowise inconsistent with the fact of working arrangements affecting the transferor's right continuing to affect the right of the transferee.

Then comes the leading enactment of the statute, as contained in section 1, which is in these terms: "The agreements hereinbefore referred to, and set forth in the schedules A and B to this Act, being such as were adopted by the orders of the Governor in Council on the twenty-second and thirtieth days of October, eighteen hundred and seventy-three, and all the matters and things therein contained, are hereby approved, and declared to be as effectual to all intents and purposes as if the said agreements had been entered into

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in pursuance of sufficient authority in that behalf, given before the adoption of such agreements by Act of the Parliament of Canada."

It was argued for the appellants that the effect of the preceding clause is precisely the same as if the Parliament of Canada had, prior to October, 1873, passed an Act authorising the Governor in Council to make an agreement with the appellant company in terms of the proposals set forth in schedules A and B. That argument appears to be well founded; but what would have been the effect of such antecedent statutory authority? Their Lordships are unable to discover any term in the contract, contained in schedules A and B, binding the Government to give the respondent company immediate possession of the line, or to transfer the property of the line, free of all contracts or arrangements whatsoever; and, if such an obligation cannot be inferred from the language of the agreements sanctioned by the Legislature, it is impossible to derive, from the language of this section, any intention to defeat the respondent company's right of possession.

It appears to their Lordships that, even if the terms of these proposals had contemplated the immediate transfer of possession to the appellant company, that would not have been necessarily conclusive against the respondents in this appeal. There is a great difference between giving authority to make an agreement, and authorising it to be made and forthwith carried out so as to override and destroy all private rights that may stand in its way.

The second, and only other section of the Act, provides that, until arrangements are completed for giving possession of the line to the appellant company, for the purpose of working it until the completion of their line from Annapolis to Yarmouth, the Government shall have power to make such other arrangements as may be necessary, "by continuing the working of the same by the Windsor and Annapolis Railway Company, or otherwise." These provisions certainly do not suggest that it was in the contemplation of Parliament that immediate possession of the Windsor Branch Railway was to be given

to the appellant company, for the purpose of operating it; on the contrary, they are apparently intended to meet the case of the Government declining to give possession of the line to the appellant company at the time when the latter had undertaken to receive it. Nor do these provisions necessarily indicate that, if there should be a subsisting working agreement with the respondent company, or any other company, that agreement was to be set aside in order to admit of the Government making such an arrangement as is provided for in this section. In case of there being no such standing agreement in the way, the powers conferred upon the Government are very wide; and, even if the agreement of 1871 had been determined, it is by no means clear that the agreement of the 22nd of April, 1875, would not give the respondent company right to continue their possession of the line.

In the view which their Lordships take of the import and effect of the Canadian Act, 37 Vict. c. 16, it becomes unnecessary to decide whether, if it had chosen to do so, the Parliament of Canada would have had the power to extinguish the rights of the respondent company under the agreement of the 22nd of September, 1871. Whether that power is given by the provisions of the British North America Act to the Dominion Parliament, or to the Legislature of Nova Scotia, is a question of difficulty and importance; but seeing that it does not arise for decision in the present case, their Lordships express no opinion whatever in regard to it.

Their Lordships will, therefore, humbly advise Her Majesty that the judgments of the Courts below ought to be affirmed, and the appeal dismissed. The appellants must pay the costs of the appeal.

Solicitors — Markby, Stewart & Co., for appellants; Bircham & Co., for respondents.

1882. { VERNON ALLEN (*appellant*) v.
Jan. 24. { MEERA PULLAY AND OTHERS
(*respondents*).

Stamp—Straits Settlements—Ordinance 8, 1873, ss. 12 and 26—Evidence.

Section 26 of Ordinance 8, 1873 (Straits Settlements), which provides for the stamping of instruments which have not been "duly stamped," includes not only instruments which are not stamped or are insufficiently stamped, but also instruments on which by inadvertence the stamp has not been cancelled in the manner required by sub-section 2 of section 12 of that Ordinance.

This was an appeal from a judgment of the Supreme Court of the Straits Settlements, reversing the decision of one of the Judges of the Supreme Court, in an action brought by the appellant against the respondents.

On the 2nd of May, 1877, the appellant sued the respondents in the Supreme Court upon an agreement under which the appellant claimed to be entitled to be paid certain commission by the respondents.

At the trial before Mr. Justice Wood, the agreement sued on was put in by the appellant bearing an adhesive revenue stamp of the value of 50 cents, which purported to be cancelled by the figures "10/8/75" having been written upon it. The respondents objected to its reception in evidence, on the ground that it was not duly stamped according to the Stamp Ordinance of the Straits Settlements of 1873. The learned Judge upheld the objection, and declined to receive the document in evidence. The case was adjourned until the following morning, when the document was again tendered in evidence, with the original stamp still uncanceled, but bearing an additional adhesive stamp of five dollars, which purported to have been placed on it by the collector of stamps. The respondents still objected to the document being received, but the learned Judge overruled the objection, and received it in evidence, and judgment was given for the appellant.

The respondents appealed from this judgment to the Supreme Court, and that Court gave judgment in favour of the respondents.

From this judgment the appeal was brought.

Mayne, for the appellant.—Section 26 applies as well to a defect in the stamp by reason of non-cancellation as to a defect in the stamp by reason of insufficiency.

Arthur Charles, Q.C., and *Mansel Jones*, for the respondents.—The agreement was not "duly stamped" within the meaning of the Ordinance. Section 26 applies only to those cases where there is no stamp or an insufficient stamp.

SIR RICHARD COUCH delivered the judgment of their Lordships (1):—

The suit which is the subject of the present appeal is brought upon an agreement made between the plaintiff and the defendants by which it was agreed that if the plaintiff should obtain the contract for supplying the Dutch at Acheen, through Messrs. Katz Brothers, of Penang, he was to hand over the contract to the defendants, and that the defendants were to pay to the plaintiff a commission on all payments for supplies at the rate of 2½ per cent.; and should the defendants or any one of them get the contract, then they were to pay to the plaintiff 2½ per cent. commission on all payments for supplies; and further that if the defendants or any one of the parties to the agreement should supply anything for the Dutch at Acheen, they agreed to pay to the plaintiff a commission of 2½ per cent. The plaintiff's case was that the defendants became the sub-contractors for the supply of cattle to Messrs. Katz for the Netherlands India Government at Acheen, and he claimed payment of the sum of 8,420 dollars for commission.

The defendants, in the first instance, demurred to the declaration, which demurrer was overruled, and they were allowed to plead; and having pleaded pleas which went to the merits of the case and denied the right of the plaintiff to recover, but which are not material to be considered in this appeal, the case came on for trial before one of the Judges of the Supreme Court of the Straits Settlements, Division

(1) Lord Blackburn; Lord Watson; Sir B. Peacock; Sir Robert P. Collier; Sir Richard Couch; Sir Arthur Hobhouse.

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of Penang. At the trial the agreement was tendered in evidence; and it appeared upon the face of it to bear a stamp of 50 cents, with a cancellation only by the figures "10/8/75."

Now the Ordinance 8 of 1873, in force in the Straits Settlements, provides by section 12 that, "No instrument liable to stamp duty under schedule A"—which schedule included an agreement of this description—"shall be deemed duly stamped unless the official stamp be of not less than the proper amount of duty required by this ordinance, and unless such stamp shall have been cancelled in the manner required by this ordinance"; which manner is stated in the second subsection to be "by the person who shall first execute the instrument, or issue or deliver it out of his hands, custody or power, writing or marking in ink on or across the same his name or initials, or the name or initials of his firm or principal, together with the date of his so writing or marking, so that every stamp shall be effectually cancelled and rendered incapable of being used for any other instrument." The omission was that, although the date of the cancellation appeared on the stamp, the initials had not been written.

The learned Judge adjourned the trial, and appears to have suggested that the parties might, if they thought fit, take some steps to remedy the defect under section 26 of the ordinance; and accordingly on the next day, the trial being resumed, the agreement was produced bearing upon the face of it a stamp of five dollars with the date "27/9/77," the word "penalty," and signed "S. Jones," he being the collector.

Here it will be convenient to refer to the provisions of the ordinance which were made use of in getting this additional stamp affixed. Section 25, by reason of which the document was in the first instance refused to be received in evidence, provides, "Except as otherwise provided by this ordinance, no instrument for which any duty shall be payable under this ordinance shall be received as creating, transferring or extinguishing any right or obligation, or as evidence in any civil proceeding in any Court of justice in the

colony, or shall be acted upon in any such Court or by any public officer, or shall be registered in any public office or authenticated by any public officer, unless such instrument shall be duly stamped," with a proviso that it may be admitted in evidence in a criminal proceeding, although it may not have the stamp required by the ordinance. Then section 26 says, "If any instrument required by law to be stamped shall have been signed or executed by any person without its being duly stamped, and special provision to meet such case is not made in this ordinance, the collector of stamps, if satisfied that there was no intention to evade payment of the proper stamp duty, may direct such instrument to be properly stamped as follows:—If the instrument be produced to the collector within one week from the time of its execution, it may be properly stamped on payment of a fine of five dollars, or double the amount of proper stamp duty if that amount does not exceed five dollars. If produced after one week but within three months, a fine of twenty dollars, or four times the amount of proper stamp duty if that amount does not exceed twenty dollars. If produced after three months, a fine of fifty dollars, or ten times the amount of proper stamp duty, if that amount does not exceed fifty dollars." It was under the last clause that the stamp of five dollars in this case was affixed. Upon the agreement being so produced before the learned Judge he held that it was admissible in evidence: and finding against the defendants upon the questions raised by the pleas, he gave judgment for the plaintiff. From that judgment there was an appeal to the Supreme Court under a provision in the ordinances which gives an appeal on a matter of law; and the majority of the learned Judges of that Court, there being two besides the Judge who originally tried the case, held that the agreement was still not admissible in evidence, and reversed the judgment for the plaintiff, and directed a judgment to be entered for the defendants. From that judgment the present appeal is brought.

The sole question is, whether this was not a case to which section 26 of the ordinance applied, and whether the agreement was not, by reason of the stamp having

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been affixed by the collector under that section, properly admitted in evidence. That section is, in its terms, apparently intended to apply to all cases where the document has not been duly stamped, and for which a special provision had not been previously made, there being special provisions in the ordinance for bills of exchange and other documents; and the words "without being duly stamped" would include not only cases where there was no stamp at all, or where the stamp was an insufficient one, but where, by inadvertence or accident, the stamp had not been properly cancelled. There might be many cases in which, from some mistake, there would not be a cancellation strictly within the terms of the section, and where it would be more reasonable to give the parties an opportunity of remedying the defect in the stamp than even in cases where something had been done deliberately. Then, the words "not being duly stamped," being intended apparently to include all those cases, the section goes on to say that the collector, if satisfied that there was no intention to evade payment of the proper stamp duty, may direct such instrument to be properly stamped. If the word "properly" is to be read, as it may fairly be, as meaning, not a stamp of the proper amount but properly stamped in all respects, not only of the proper amount but properly cancelled, and stamped in such a way as to make the instrument admissible in evidence, then what may be reasonably considered to be the intention of the ordinance—namely, that provision should be made for making documents which, through some cause or other, had not been properly stamped, admissible in evidence—would be carried out. On the other hand, if the word "properly" is to have a limited meaning, and is not to be read as "being duly stamped," the effect would be this: that an opportunity is given to parties to go to the collector and to pay the penalty, get the document stamped, and then, when they have got it stamped, if the defect was want of cancellation, it still could not be used in evidence; but if the defect was the want of a stamp, it might perhaps be used. The object of this clause in the ordinance, coming as it does immediately after the 25th section, appears to their Lordships to

be to provide for cases which it would be most reasonable to provide for—namely, that persons should not lose the power of suing upon an agreement or a document because there had been some omission with reference to the stamping of it; that if the penalty was paid, they could then make use of the document to enforce their rights. This would further appear to have been the intention from what is done by section 30, because the Legislature appears to have provided in cases of this kind two modes of remedying the defect. The parties may go to the collector, and on paying the penalty they may get a document stamped in such a way that it can be made use of; but if they omit to do that, if the defect is not discovered, as it may sometimes not be, until the document is actually produced in Court, then it is provided that the Court may receive in evidence an instrument not bearing the stamp prescribed by the schedule, on payment of the proper amount of stamp duty, to be determined by the Court. The Court may do what the collector might do, and it is observable here that the Court is empowered to receive the document in evidence upon payment of the amount of stamp duty, but it is not necessary before it is received in evidence that the stamp should be cancelled. There is a direction afterwards that the officer of the Court shall cancel it; but it is not a condition precedent to its being received in evidence. It would be properly received, and the omission afterwards to cancel it would not make it less receivable; it would have already been received. In the case of its being produced in Court and the penalty being paid, it is to be received in evidence without the formal cancellation which it is said ought to have been made under section 26, and which could not be made. Why should there be any difference between the remedy given to the party in the one case and in the other? The whole scope of the provision appears to be this: that under section 25, the document being declared not to be receivable in evidence unless it is duly stamped, the Legislature says, "Now that being the state of things, a remedy shall be provided; and if the party pays the penalty which is prescribed, and the stamp is affixed, then the docu-

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ment may be made use of. The construction which was put upon the ordinance by the learned Judges of the lower Court, instead of being a reasonable and natural construction of its provisions, is in reality a forced one; and some of their observations appear almost to shew that they felt that to some extent it was a forced construction.

Their Lordships therefore are of opinion that the document was properly received in evidence by the learned Judge, and they will humbly advise Her Majesty that the judgment of the Court on the appeal be reversed, and that the judgment of the first Judge do stand. The respondents will pay the costs of the appeal, and the appellant will receive back his deposit.

Solicitors—Talbot & Tasker, for appellant;
Walker, Martineau & Co., for respondents.

1882. { MARY ANN RHODES (appellant)
March 8. { v. SARAH ANN RHODES (respondent).

Will—New Zealand—Matter Inserted by Fraud or Inadvertence—Probate—Construction—Rules for.

Matter proved to have been inserted in a will by fraud or inadvertence may be rejected on probate, provided such matter does not affect the construction of other parts of the will. No distinction can be drawn between words used by a testator himself and those of the draughtsman who prepares a will.

In construing a will words are to be construed according to their plain ordinary meaning, unless the context shews them to have been used in a different sense, or unless this rule would lead to some manifest absurdity or incongruity.

A testator gave certain property to his wife for life, and the residue of his estate to the issue of their marriage, and "from and after the decease" of his wife without leaving issue of their marriage he gave his estate to the appellant. There was no issue of the marriage:—

Held, notwithstanding the words "from

and after the decease," that the appellant's interest, regard being had to the general scheme and to the several provisions of the will, vested immediately on the death of the testator, and was not postponed until the death of the wife.

This was an appeal from an order of the Supreme Court of New Zealand (Wellington District).

The suit was instituted by the appellant, the natural daughter of and a devisee under the will of William Barnard Rhodes, of Highland Park, near Wellington, in New Zealand. The questions raised in the suit were: (1) Whether the words inserted in the probate of the will, "And from and after the decease of my said wife without leaving issue of our said marriage," should be omitted therefrom; and (2) What estate or interest the appellant took under the provisions of the will?

The testator died on the 11th of February, 1878, having executed a will dated the 9th of February, 1878, and probate of the will so executed was granted by the Supreme Court to the respondent.

The material parts of the will are fully set out in the judgment of their Lordships.

The appellant, by her declaration in the suit, alleged that the words "And from and after the decease of my said wife without leaving issue of our said marriage," had been inserted in the residuary clause of the said will by error, contrary to the instructions of the testator, and had been retained therein at the time of the execution of the will without his knowledge or approval, and had been by error included in the said probate; and she claimed that the probate of the will might be recalled, and an amended probate granted, omitting such words from the residuary clause of the said will; and she further claimed a declaration that she was entitled, under the trusts of the said will, to the immediate possession and enjoyment of the moneys arising and to arise from the residuary estate of the testator.

The respondent pleaded to the declaration.

The suit came on for trial, and a Mr.

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Hart, who prepared the will, was called as a witness, and produced a draft will prepared by him. He also produced a fair copy of the draft, prepared by him after he had read over the draft to the testator. It appeared that the words "and from and after the decease of my said wife without leaving issue of our said marriage" did not occur in the draft, but in the fair copy. Mr. Hart stated that he had inserted the words in the fair copy without any instructions from the testator.

At the conclusion of the trial the jury were discharged, the parties agreeing that the evidence taken should be turned into a Special Case.

On the 23rd of August, 1880, the Court made a decree dismissing the suit.

From this judgment the appeal was brought.

Benjamin, Q.C., Horace Davey, Q.C., Carson, and A. L. Smith, for the appellant, referred to *Jarman on Wills* (1), *Wilson v. Wilson* (2), *Bective v. Hodgson* (3), *Boon v. Carnforth* (4), *Dyer v. Dyer* (5), *Davenport v. Colman* (6), *Simpson v. Hornby* (7), *Simmons v. Rudall* (8), *Attwater v. Attwater* (9) and *Underhill v. Roden* (10).

The Attorney-General (Sir H. James), Rigby, Q.C., and Jeune, for the respondent, referred to *Weatherall v. Thornburgh* (11) and *Abbott v. Middleton* (12).

LORD BLACKBURN delivered the judgment of their Lordships (13):—

The plaintiff, Mary Ann Rhodes, brought a suit in the Supreme Court of

- (1) Vol. i. p. 304.
- (2) 1 Sim. N.S. 288.
- (3) 10 H.L. Cas. 656; 33 Law J. Rep. Chanc. 601.
- (4) 2 Ves. sen. 277.
- (5) 1 Mer. 414.
- (6) 9 Mee. & W. 481.
- (7) Gilb. Exch. 115.
- (8) 1 Sim. N.S. 115.
- (9) 18 Beav. 330.
- (10) 45 Law J. Rep. Chanc. 266; Law Rep. Ch. D. 494.
- (11) 47 Law J. Rep. Chanc. 658; Law Rep. Ch. D. 261.
- (12) 7 H.L. Cas. 68; 28 Law J. Rep. Chanc. 110.

(13) Lord Blackburn; Lord Watson; Sir Barnes Peacock; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobhouse.

New Zealand against the executors and trustees of the will of William Barnard Rhodes, deceased, and the parties who took interests under that will adverse to her own, which will had been proved, as it was executed, and she "claims that the probate of the said will be recalled, and an amended probate granted, omitting from the residuary clause of the said will the words 'and from and after the decease of my said wife without leaving issue of our said marriage.'"

"And further, that it may be declared by the decree of this honourable Court that the plaintiff is entitled, under the trusts of the said will, to the immediate possession and enjoyment of the moneys arising and to arise from the residuary estate of the testator."

The Court pronounced against both claims, and dismissed the suit. Against this decision the present appeal is brought. It is necessary, first, to consider whether the plaintiff is entitled to have the probate amended by omitting the words referred to; for the second claim, which depends on the true construction of the will, cannot properly be disposed of till it is ascertained what forms the will.

And their Lordships, at the close of the argument for the appellants, intimated that they had no doubt that this part of the decision of the Court was right, and that no ground had been shewn for altering the probate.

The law of New Zealand, like that of England, requires that a will should be in writing, and executed by the testator, before witnesses, in a particular manner.

When an instrument purporting to be the will of a deceased person has been executed by the deceased in the proper manner, but it is sufficiently proved that though he executed the instrument, yet from fraud he executed that which was not his will, there is no difficulty in pronouncing that the instrument is not his will. And it has been held that when it is sufficiently proved that the instrument comprised his will, but that from fraud, or perhaps from inadvertence, such as that *In the Goods of Duane* (14), the instrument which he actually executed

- (14) 2 Sw. & Tr. 590; 31 Law J. Rep. P. & Ad. 173.

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contained also something which was not his will, this latter part is to be rejected. And in such a case, if this latter part is so distinct and severable from the true part that the rejection of it does not alter the construction of the true part, it has been held that, consistently with the statute of wills, the execution of what was shewn to be the true will, and something more, may be treated as the execution of the true will alone. A much more difficult question arises where the rejection of words alters the sense of those which remain. For even though the Court is convinced that the words were improperly introduced, so that, if the instrument was *inter vivos*, they would reform the instrument and order one in different words to be executed, it cannot make the dead man execute a new instrument; and there seems much difficulty in treating the will, after its sense is thus altered, as valid within the 9th section of 7 Will. 4. and 1 Vict. c. 26, the signature at the end of the will required by that enactment having been attached to what bore quite a different meaning. It has never, as far as their Lordships are aware, been necessary to decide as to this, though the judgment of Sir James Hannen in *Harter v. Harter* (15) has some bearing on it. And their Lordships think it unnecessary and therefore improper now to express any opinion on this question, for the evidence does not raise it.

Mr. Hart, who drew the will, was called as a witness, and it is agreed that all he said was quite true. He had received instructions and prepared a draft will in which, thinking it impossible that the dying man could have children, he made no provision for them. The testator, on this draft being brought to him, desired that the provisions in a former will in favour of his issue should be restored. As it turned out, the testator died two days afterwards and there was no posthumous child, and those provisions took no effect. Mr. Hart not only inserted the provisions required, but prefaced them by the words, "and from and after the decease of my said wife leaving issue of our marriage," and at the end united them to the subsequent part of the draft will by inserting

(15) Law Rep. 3 P. D. 11.

the words, "and from and after the decease of my said wife without leaving issue of our said marriage." This he did without any directions from the testator to insert such words, and having no particular reason for inserting them, except that he thought they would come in in an ordinary will. He took the will, when fairly copied, to the testator for execution, and it was read over to him, he being then of disposing mind, though very ill. It is now said that the effect of those latter words was to change the whole effect of the subsequent part of the will, and so defeat the testator's intentions. Whether those words had that effect or not is a question on which the Supreme Court of New Zealand, consisting of five Judges, has been divided in opinion, and the same question has occupied several days of elaborate argument before their Lordships. It is impossible to suppose that the testator had an intelligent appreciation of the effect of these words at all, and Mrs. Rhodes, his widow, who is called as a witness, says that just after the execution of the will he told her that he could hardly say he had heard the will read at all, adding, "But I think it is sure to be all right, because Mr. Hart is an honest man, and I trust him." This is exactly the state of mind which, without any such evidence, their Lordships would have inferred to be that of the testator.

Their Lordships think that there is no difference between the words which a testator himself uses in drawing up his will, and the words which are *bona fide* used by one whom he trusts to draw it up for him. In either case there is a great risk that words may be used that do not express the intention. There probably are very few wills in which it might not be contended that words have been so used. However this may be, the Court which has to construe the will must take the words as they find them.

Their Lordships therefore proceed to consider the claim of the plaintiff that it may be declared that the plaintiff is entitled, under the trusts of the will, to the immediate possession and enjoyment of the moneys arising and to arise from the residuary estate of the testator.

Whether she is or is not so entitled depends on the true construction of the will.

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The same will had been before the Court of Appeal in New Zealand on a case stated under the provisions of the New Zealand Stamp Act. The statement in that case is concise, and is as follows:—

"On the 9th of February, 1878, the said William Barnard Rhodes made his last will and testament, a copy of which is hereunto annexed. Whereby, after making certain dispositions in favour of his wife, Sarah Ann Rhodes, and others, not affecting the question at issue, he directed that from and after the decease of his said wife without leaving issue of his said marriage, his trustees should stand possessed of all the undisposed of residue of his real and personal estate in trust for his natural daughter, Mary Ann, for and during the term of her natural life, with further provision in case of her death or marriage.

"The testator died on the 11th day of February, 1878, without having revoked his will, and the same has been duly proved in the Supreme Court at Wellington.

"There is no issue of the marriage of the testator with the said Sarah Ann Rhodes, who is still living.

"The testator's natural daughter is still unmarried, and is of the age of twenty-six years or thereabouts.

"The executors of the said will have filed with the Commissioner of Stamp Duties the statement of property required under Part III. of the said Act, and by this statement it appears that the value of residuary estate which is alleged to be the subject of the above-mentioned trust has been assessed at 272,796*l.* 0*s.* 5*d.*

"The dutiable value of this sum on a life of twenty-six years of age, at 10*l.* per centum, in accordance with the 3rd schedule of the said Act, is 18,405*l.* 5*s.* 5*d.*

"This duty has been so assessed by the Commissioner in accordance with the provisions of Part III. of 'The Stamp Act, 1875,' on the ground—

"That there being no life interest immediately preceding that taken by the natural daughter of the testator, the duty is payable immediately on his death, and has been paid by the executors accordingly.

"The Heaton Park estate, valued at 74,970*l.* 17*s.* 6*d.*, and Highland Park estate, valued at 10,600*l.*, have been included in the foregoing valuation.

"The executors are dissatisfied with this assessment, and appeal against the same on the grounds following:—

"1. That, looking to the terms of the will, the alleged life-interest of the natural daughter of the testator is not in possession, but is contingent upon her surviving the widow of the testator, and that, pending the determination of that contingency, the income should be accumulated for the benefit of the person or persons who would then be entitled thereto.

"2. That 'The Stamp Act, 1875,' makes no provision for the immediate payment of duty in respect of unascertainable and contingent future interests.

"The Commissioner adheres to the assessment already made, and the executors have requested him to state a case as provided by the said Act.

"The questions for the decision of the Court under the said Act are,—

"1. Whether the assessment made by the Commissioner can be sustained under Part III. of the said Act, or whether he is precluded from making such assessment on the grounds alleged by the executors, or any of them?

"2. If the assessment made by the Commissioner cannot be sustained, what duty ought he to have assessed under the said Act in respect of the interest appearing to be taken by the natural daughter of the testator under his said will?"

The copy of the will annexed to this case was, for convenience of reference, divided into paragraphs which were numbered. The will itself was not so divided, and, unless this is remembered, the division into paragraphs may mislead, especially as, in more instances than one, the gentleman who divided the will into paragraphs has broken into several sentences what in the will was obviously one sentence. But the numbers of the paragraphs afford a convenient mode of referring briefly to the particular passage in the will to which it is desired to call attention, and this convenience has, in the present record, been retained, without any disadvantage, by printing the will as it actually was drawn up, and printing on the margin opposite to each passage which had been made a paragraph the number which had been attached to that paragraph, thus affording facility

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by use of the figures to refer to the passages meant, without any risk of misleading by its being supposed that the testator had broken up these passages into separate sentences.

In the Court of Appeal in New Zealand, Mr. Justice Williams answered the questions put in the case on the Stamp Act, thus:—1. The assessment made by the Commissioner cannot be sustained. 2. The duty should be assessed only on the life-interest taken by the natural daughter in the bank shares and corporation bonds mentioned in paragraph 40, and in the land mentioned in paragraphs 52 and 53. Mr. Justice Gillies answered them,—1. That the assessment made by the Commissioner cannot be sustained, on the ground that the testator's natural daughter takes no life-interest in the residue until the decease of the widow, and even then takes no life-estate in Highland Park or Heaton Park estates.

The latter part of this answer was on a point which, as far as regards Highland Park estate, cannot arise so long as Mrs. Rhodes continues to fulfil the conditions under which, by the parts of the will which, for convenience, may be referred to as paragraphs 46, 47, 48 and 49, she enjoys that estate. Miss Rhodes can on no construction of the will take an estate in possession in what is enjoyed by the widow, though she may take a vested estate in Highland Park subject to the widow's interest. As far as regards Heaton Park estate the question does not yet arise, if what is given to Miss Rhodes is not to vest in possession, till after the decease of the widow. But if what is given to Miss Rhodes in other property than Highland Park vests at once in her on the death of the testator, it is necessary to say whether Heaton Park estate is given to her or not, and both points may be material in construing the will. Mr. Justice Gillies answers the second question as Mr. Justice Williams did.

Mr. Justice Johnston did not give specific answers to the two questions, but with considerable hesitation expresses his opinion thus: "On the whole I do not see on the face of the will itself any such distinct evidence of the intention of the testator, that his daughter (already provided for by

paragraphs 40, 49 and 52) should enjoy the residue before the death of the widow, as ought, in my opinion, to override the application of the words of paragraph 64 in their ordinary sense to the provisions of paragraph 65.

"I do not feel quite sure that paragraph 65 applies to the Highland and Heaton Park estates, or that if it does, the authorities on distributive construction warrant the application of the doctrine to paragraphs 64 and 65.

"In conclusion, I wish it to be understood that I have formed, and that I express, my opinion upon this embarrassing case with much diffidence and uncertainty."

Mr. Justice Richmond, in whose opinion Chief Justice Prendergast concurred, says: "In this case the question is whether Miss Rhodes is entitled under the will of her father to an immediate life-interest in his residuary, real and personal estate. This, again, depends upon the interpretation of words which occur in more than one part of the will, and which, literally understood, would postpone the vesting in possession of Miss Rhodes' estate until the death of the testator's widow."

After an elaborate examination of the will and the authorities, he says: "On these grounds, I am of opinion that Miss Rhodes takes a life-interest in possession in the whole estate, except Highland Park, and that duty is to be assessed upon this basis."

So that on the construction of this will three of the Judges against two held that the words referred to did postpone the vesting in possession of Miss Rhodes' estate until the death of the widow. This decision was not between the same parties, and is not in any way *res judicata*. But it was properly considered by the Judges in New Zealand an authority binding on them, and therefore they refused to make the declaration asked for.—On the appeal before this Board the opinions of these learned Judges were properly relied on as weighty authorities in favour of the respondent and the appellant respectively, but they were not and could not be relied on as binding upon this Board; nor is that decision now before their Lordships, so that they can reverse it. If the decision of their Lordships in the case now before

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them should shew that the opinion of Mr. Justice Richmond was the right one, it will follow that the Revenue authorities in New Zealand have not received payment of a large sum which they ought to have received; but the Revenue authorities must take what steps they think fit to obtain payment of it, notwithstanding the previous decision of the Court of Appeal. If the revenue laws of New Zealand are framed as carefully as those of this country, there will be little difficulty in their doing so.

The general rule as to the construction of wills has often been laid down, and generally in terms not substantially differing from each other. About thirty years ago there did arise a great difference in opinion amongst the noble and learned Lords who then sat in the House of Lords as to the manner in which that rule should be applied.

In *Grey v. Pearson* (16) Lord Cranworth and Lord Wensleydale came to one conclusion and Lord St. Leonards to another. The opinion of the majority prevailed, and that decision is binding on all Courts (including the House of Lords itself) on any will similar to that then in question.

Soon after, in *Abbott v. Middleton* (12), a question arose respecting the construction of a will, in which the then Lord Chancellor, Lord Chelmsford, and Lord St. Leonards applied the rule one way, and Lords Cranworth and Wensleydale applied it the other way; and consequently, there being an equal division of the House, according to the rule of the House of Lords, the decision appealed against stood affirmed. But there was not any difference of opinion as to what was the rule; indeed, it is curious to observe that Lord St. Leonards, who was for construing the particular words as expressing an intention different from that which was the *prima facie* meaning of those words, lays down the rule at p. 94 more stringently than Lord Wensleydale, who went as far as any one in adhering to the literal meaning, does at p. 114, where he makes his favourite quotation from *Warburton v. Loveland* (17). The same question came again before the Lords in *Thelluson v.*

Rendlesham (18). There was there a difference of opinion among the Judges who were consulted, but there was none amongst the Lords. Lord Cranworth says (p. 494):—

“The rule on which the appellant relies is that universally recognised and acted on, namely, that words are to be construed according to their plain ordinary meaning, unless the context shews them to have been used in a different sense, or unless the rule, if acted on, would lead to some manifest absurdity or incongruity; indeed, the latter branch of the rule is, perhaps, involved in the former; for, supposing that the rule, if acted on, would lead to manifest absurdity or incongruity, the context must be considered to shew that the words could not have been used in their ordinary sense.”

Lord Wensleydale once more repeated the rule as laid down in *Warburton v. Loveland* (17), but it is worth observing that by “an absurdity” can hardly be meant a result which the Court who construed the will thought ought not to have been the intention of the testator. If that had been so, the Thelluson will itself would have been upset. Lord St. Leonards says, p. 509, that much thought and learning had been bestowed for the purpose of endeavouring “to counteract, and properly too, if it could be done, the ambitious views of the testator,” but the intention was too clearly expressed. Lord Cranworth, therefore, seems quite correct when he says that the latter branch of the rule is but a means by the context of shewing that the words were not used in their ordinary sense, as it is not to be presumed that the testator meant an absurdity; but that if it is shewn that it was intended to use them, so as to work this absurdity, that intention, if it be not illegal, must be carried out.

Taking this as the rule, it must in every will where the point arises be a question of more or less. The Court has to say what was the intention as appearing from the whole will. Cases can be of but little use, for the words of one will are seldom the same as those of another; but, no doubt, when it has been held that a par-

(16) 6 H.L. Cas. 61; 26 Law J. Rep. Chanc. 473.

(17) 1 Huds. & B. Ir. 648.

(18) 7 H.L. Cas. 429; 28 Law J. Rep. Chanc. 948.

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ticular devise indicates an intention so strong that other words must be strained to give way to it, that is a great help to those who argue that other words must give way to a similar devise; and where it has been held that some particular words indicate so strongly an intention that they cannot be strained to give way to a general indication of intention, it is a help to those who argue that they should not give way now.

Starting with this as the rule of law, it seems that the question now raised is whether there is an indication of intention on the whole will that certain interests should be vested immediately on the testator's death, as regards the bulk of his property in possession, and as to Highland Park estate subject to the life interests given in it, sufficiently clear to require the Court which has to construe that will to say that words which, literally understood, would express an intention to postpone the vesting of those interests till after the death of Mrs. Rhodes, must be construed as expressing an intention consistent with those interests being vested, though that intention is not that which, but for the context, would be understood from the words used in their ordinary sense, and is one which would have been more aptly expressed in other words; or whether the intention to postpone is so clearly and strongly expressed that the Court is required to give the words that effect, notwithstanding the other parts of the will, which tend to the conclusion that the intention was to vest.

And it seems impossible to answer this question without examining the whole will at perhaps tedious length. For every indication of intention that those interests should vest adds great strength to those that go before or come after. The force of the whole of such indications taken together is far greater than the sum of the forces of each taken separately.

Their Lordships think that there is enough to produce not a mere conjecture that the intention was to make the estates vested, but to produce in their minds a conviction that this was intended.

In order to explain their reasons for this, it is necessary to examine the whole will.

It is not necessary to notice the earlier part of the will, further than to say that the testator, by a part of the will called paragraphs 40 to 44, both inclusive, directs his trustees to pay the income arising from some Bank of New Zealand shares and some debentures to the separate use of the now appellant, and from and after her death to divide the capital amongst her issue, but if she die without leaving any such issue, the capital to fall into his residuary estate with powers for the maintenance and advancement of her issue during their minority. It is material to observe that no power is hitherto given to settle anything for the benefit of the husband of the appellant. The testator next makes provisions for his widow, Mrs. Rhodes, of which it is only necessary to observe that he gives her an interest in Highland Park estate, and an annuity of 2,000*l.*, so long as she should continue his widow, which interest would necessarily come to an end on her death; though it might come to an end sooner. There is an optional power to set aside ten acres of Highland Park estate for the purpose of building a house to be settled on his daughter, the appellant, for life, and on her husband for life, if he survived her. The remainder in Highland Park estate is not yet disposed of, nor is Heaton Park estate disposed of, nor the residue of the testator's real and personal estate, which was large.

And here, before examining the will further in detail, it may be well to state what seems to have been the general scheme of the will. The testator was married, but had no children, and there was not much prospect of his having any. He had a natural daughter, Mary Ann, the now appellant, for whom he makes a provision in the part of the will just stated, such as to shew that she was the object of his care and affection, and that he expected that on his death she would live with his widow, and be treated by her as she would have treated a legitimate step-daughter. He had also collateral relatives. He had two landed estates, Highland Park estate, where he lived, and Heaton Park estate, and other real and personal estate of great value.

After creating by the earlier part of the

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will trusts which do not affect the great bulk of his property at all, and which do not affect the inheritance of Highland Park estate, the testator makes a variety of provisions (from what is called paragraph 54 to what is called 63 inclusive), all dependent on there being issue of his wife of their marriage, but as there never was such issue none of those ever came into operation. But from this it clearly appears that he preferred his issue by his wife, if he should have any, to Mary Ann. Next he proceeds to make a series of provisions (from what is called paragraph 64 to what is called paragraph 70) all for the benefit of Mary Ann, her future husband, and her future children. As Miss Rhodes is not yet married, the only question which yet arises is as to what she takes under this set of provisions, and the principal question is whether she takes anything under them so long as Mrs. Rhodes, the widow, lives. But those provisions clearly shew that the testator preferred Mary Ann and her children to his collateral relatives. Next by provisions (in what is called paragraph 71 to the end of the will) he gives his whole property in five shares to different collateral branches of his family. But they are not to take anything till Miss Rhodes' death, nor unless Miss Rhodes' children, if there should be any, have died, if sons, under twenty-one, or, if daughters, under that age and unmarried. And one thing clear in paragraphs 71 and 78 is that, supposing the testator's own issue and Mary Ann and her issue all out of the way, the collaterals are to take the ultimate residue, whatever that may include, at once, and not to wait for the death of the widow, unless some words in paragraph 67 postpone their right to Heaton Park and Highland Park till her death. Now the collaterals are postponed to all the testator's issue and to Mary Ann and her issue. Why persons so postponed in the order of gifts should be preferred in the one respect that, if they take at all, they are not to wait for the widow's death, is so difficult to understand, that it would of itself suggest a serious doubt whether the will does really direct the prior takers so to wait.

It is necessary, before going further, to dispose of one question. The testator

begins a portion of his will by the words "and from and after the decease of my said wife leaving issue of our marriage," and follows this by a series of provisions none of which could come into operation at all unless there were some issue of their marriage, and then begins a subsequent set of provisions with the words "and from and after the decease of my said wife without leaving issue of our said marriage." Their Lordships think that, whatever be the effect of those words preliminary to the introduction of the provisions for the issue of the marriage, they must affect all such provisions. It might be a question if this would be so if there had not been such a marked division of the will into two parts; but, as it is, they think the words at the beginning of what is called paragraph 54 must be considered as a preamble to, and affecting, all the provisions down to what is called paragraph 63 inclusive.

And this brings us to the part of the will which requires detailed examination. The testator has made provision for numerous issue. As it has turned out, no such issue ever came into existence; but it is proper to examine what provisions he did make for his issue by his wife, in order to ascertain his intentions, and it is the more necessary to consider this, because the preamble to the provisions in favour of his issue, "and from and after the decease of my said wife leaving issue of our marriage," and that which is called paragraph 64, "and from and after the decease of my said wife without leaving issue of our said marriage," which forms the preamble to the subsequent devises and bequests which have come into operation, and which have now to be construed, are evidently relative to each other, and must be construed on the same principle. The testator, by the latter part of what is called paragraphs 54, and by 55 and 56, makes provisions which, but for the preamble at the beginning of 54, would be perfectly clear and sensible. He gives Highland Park, subject to the life interests already created, and Heaton Park estate to his sons successively in tail male, with remainder to his sons successively in tail general, with remainder to his daughters successively in tail male, with remainder to his daughters

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successively in tail general, and in default of such issue directs that Highland Park and Heaton Park estates "shall, after the decease of my said wife, and such last mentioned failure of issue, go and be as hereinafter in that behalf set forth." There can be no doubt, if the preamble were not there, that these successive estates tail would all be vested estates tail. Then he gives "all the residue of my real and personal estate" (and it appears that he had real estate besides Highland Park and Heaton Park estates, and large personal estate), "upon trust for my children by my said wife who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or be married previously with the consent of my wife, and the issue of such of these as may be dead leaving issue, in equal shares and proportions." There can be no doubt (but for the preamble) that, if an only child, being a daughter, married when under age with the consent of the widow (which could only be given during her life), the whole of this fund would then become vested in the daughter, the very object of making it vest then being that a proper settlement might be made on her marriage. But the preamble, "and from and after the decease of my said wife leaving issue of our marriage," is there, and giving these words their natural and ordinary sense none of the estates given to the issue are to vest till the widow dies. So that, in the possible event of her surviving to see her grandchildren, neither Highland Park in which she had an interest, nor Heaton Park and the rest of his real and personal estate in which she had nothing, would vest so long as she lived. So far as regards the estates tail, this would prevent any dealings with the land, though she had a son who attained twenty-one, and wished to marry, and on his marriage to settle these estates, and the rents of Heaton Park estate would accumulate for the benefit of those who ultimately took the residue, until the period prescribed by the Thelluson Act had elapsed, and then go to the heir-at-law. There are express provisions as to the accumulations of income for Mary Ann's children after her death and during their minorities, and to those of his own children

after the widow's death and for some period not so precisely defined. These directions are not easily to be reconciled with his total silence about accumulation during the supposed suspension of enjoyment for the widow's life. The testator was alive to the propriety of accumulation, while there could be no complete enjoyment of the property. The fact that he has directed none during the life of his widow points strongly to the conclusion that accumulation of income for that period is no part of his plan. Besides this, such a scheme would at least be exceedingly inconvenient, and such a devise would be eminently injudicious; whether it would amount to an obvious absurdity, within the meaning of the rule as laid down in *Warburton v. Loveland* (17), or not, might be made a question. Considering how many very strong decisions there are for construing wills so as to favour early vesting, their Lordships are by no means prepared to say that this alone would not be a sufficient ground for modifying the sense of the words of the preamble. But when it is found that the testator has declared his intention to be that his daughter, if he has one, should, on marrying with the consent of his widow (and consequently in her lifetime), take a vested interest in the rest of the real estate and the personal estate, to put the construction on that preamble that this possible daughter shall take nothing till the widow dies, is not merely an absurdity, but a repugnance and inconsistency such as to justify a modification of the words of the preamble so far as to avoid these consequences, and these consequences are avoided by construing these words as meaning "if there shall be issue of our marriage, then when the interest of my wife in Highland Park terminates, which it will at all events do on her decease, as to the Highland Park estate, and as to the rest in which she takes no interest at once." It is quite true that thus understood the words are quite useless, merely idle; but their Lordships think this is no more than an example of the maxim *superflua non nocent*. It is also true that this makes the estates given in Highland Park estate to commence on the termination of the widow's interest, which may happen whilst

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she yet lives. It is not, perhaps, necessary to decide what would be the case in an event which has not yet happened, and may never happen; but the provisions in the portion of the will divided into the paragraphs 58 to 63 inclusive, are strong to shew that the testator thought that his widow, whilst she remained such, would have the means to provide for his and her children during their minority, along with an allowance of 200*l.* a year for each child during its infancy; but on her death or marriage he makes provisions for the advancement and maintenance of his children during their minority, to provide for such children, indicating that he supposed that her ability to provide for them would cease, not only on her death, but on her marriage. But there is no provision whatever for any advance for the benefit of a child having attained twenty-one after the widow's marriage whilst she still lives. This looks as if he thought that on her marriage as well as on her death the child would come into possession of what had been given her during widowhood; and also that the portions which were vested in the children on attaining twenty-one would come into possession, so that the children would need no further advance though the widow still lived—certainly strengthening the inference to be drawn from the earlier provisions.

The draftsman evidently supposed that by the two provisions, "from and after the decease of my wife leaving issue of our marriage," and "from and after the decease of my wife without leaving issue of our said marriage," he had provided for everything. Taking these words in their literal sense, it would follow that if Mrs. Rhodes had had a posthumous child which died before her this large property was to go to Miss Rhodes; but if the posthumous child survived Mrs. Rhodes, though only for a few seconds, no portion of it was to go to her. This is so capricious and absurd that it was hardly contested on the argument that the words "without leaving issue of our said marriage" must be read as meaning "in case there never shall be such issue, or if there be any such issue, on the estates given to such issue failing," but it was strongly urged that all was postponed till Mrs. Rhodes died. If the construction

of the words forming the preamble to the devises and bequests to the testator's own children, which has been already indicated, is the correct one, it would follow that a similar construction should be put on those words here. And the subsequent provisions in the will greatly fortify this.

The part of the will which is referred to as paragraphs 64, 65, 66, and the beginning of what is referred to as paragraph 67, is as follows:—

"And from and after the decease of my said wife without leaving issue of our said marriage. And subject to the foregoing devises, legacies, bequests and directions, I direct that my said trustees shall stand possessed of all the undisposed of residue of my real and personal estate, in trust for my said natural daughter Mary Ann, for and during the term of her natural life; but if she shall marry, then I direct that my said trustees shall stand possessed, as well of the said last-mentioned trust property as of the said four hundred and one New Zealand Bank shares and sum of ten thousand pounds hereinbefore mentioned, in trust to pay the annual income arising therefrom to my said reputed daughter, for the term of her natural life, for her sole and separate use, but without power to alienate or anticipate the same, and her receipts alone to be sufficient discharges for such payments. And from and after her decease upon trust to pay her husband, if he shall survive her, during his life the sum of six hundred pounds per annum, payable quarterly. And from and after the decease of my said natural daughter leaving issue, subject as aforesaid, I direct, &c."

And then follow trusts for the sons and daughters of Miss Rhodes successively in tail; and then the will proceeds, "and, in default of such issue, then I declare and direct that the said several properties shall, after the death of the survivor of them my said wife and reputed daughter, and such failure of issue as aforesaid, become and be part of my residuary estate." Reliance was, in the argument, placed for the appellant on the word "several," as indicating an intention to use words distributively, and for the respondents on the words "the survivor," as indicating a contrary intention. It is rather too narrow a

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ground for drawing a conclusion either way.

There then follow provisions, designated as paragraphs 68 and 69, which it is not necessary to set out at length, though they must be referred to afterwards; and then follow important provisions designated as paragraphs 70, 71 and 72, which it is as well to set out in their very words:—

“(70) And subject, and except as aforesaid, as to all the residue of my real and personal estate and the annual income arising therefrom, I direct that from and after the decease of my said daughter, and subject to the payment of the annuity to her husband during his life, the same shall be held in trust for all and every the child and children of my said reputed daughter, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or previously marry, as tenants in common, and also during the minorities or respective minorities of any child or children of my said reputed daughter. I direct that the trusts for maintenance, education and bringing-up of child or children out of income of expectant share or shares, and accumulation and investment of surplus, and use of expectant income of shares in common, and raising and applying not exceeding half of expectant share for advancement in the world, hereinbefore set forth as applicable to the expectant shares or succession of the children or child of my said daughter hereinbefore set forth, shall be herein implied and made applicable to the expectant shares or succession of the children or child of my said daughter last hereinbefore provided. (71) And in case there shall be no children or child of my said marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, and there shall be no children or child of my said daughter who shall, being a son, live to attain the age of twenty-one years, or being a daughter, shall live to attain that age or marry, (72) then subject to the preceding provisions of this my will as to the ultimate residue of my real and personal estate.”

He makes a bequest over. This completes the will as far as regards the bequests for the benefit either of his widow,

and his issue by her, or of his reputed daughter, and her husband, should she marry, and her issue, and contains all to which it is necessary to refer for the purpose of deciding the question now before their Lordships.

And now it is proper to consider how the testator disposes of the reversion in Highland Park estate subject to the life interests created in it, and the reversion in Heaton Park estate in which there are no estates for life granted, after the estates tail have come to an end. Those reversions have not, down to that part of the will which is designated as paragraph 65, been disposed of further than by saying that they are “to go and be as hereinafter in that behalf set forth.” Are they to be included in “the undisposed of residue of my real and personal estate” which is left to Miss Rhodes for life? They certainly are, in the ordinary natural sense of the words, so included, and as both reversions are after her decease settled in tail on her children, there seems every reason for construing the words in their natural sense. Mr. Justice Gillies says that “hereinafter in that behalf set forth” cannot possibly have any meaning unless they refer to the devises of estates tail in these estates to the children of his reputed daughter. Their Lordships are unable to agree in this. They think they naturally refer to the estate for life given to his daughter, subject to which those estates tail are given.

Then it is to be observed that the income arising from the bank shares and the 10,000*l.* had already, by what is referred to as paragraph 41, been settled to the separate use of Miss Rhodes, and the income from them was certainly payable to her whether Mrs. Rhodes was alive or not. It seems to their Lordships that when the testator directs his trustees to stand possessed as well of the last-mentioned trust property as of the bank shares and 10,000*l.* in trust to pay the annual income, &c., he almost expressly declares that the income arising from the trust property shall, like the income arising from the bank shares, be paid to her whether Mrs. Rhodes is alive or not. It is true that this cannot be done with regard to any property the income of which is given to Mrs. Rhodes,

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so long as Mrs. Rhodes lives and is entitled to receive it, and this is provided for by the words "subject to the foregoing devises, legacies, bequests and directions." It is also provided for by the words of the preamble, "from and after the decease of my said wife," which if applicable only to such property as she took an interest in may be useless tautology; but if applicable also to the income of Heaton Park estate, and of the large residue of his real and personal estate, are in direct conflict with the direction to treat it like the income of the bank shares, and this affords a strong argument that these words were not meant to have the effect of postponing Miss Rhodes' interest till Mrs. Rhodes' death. The provisions designated as paragraphs 68 and 69 have a tendency the same way; but as these provisions are not very clear, and apparently interfere with the life interest of the daughter as soon as a son attains twenty-one, their Lordships do not so much rely on that. But the provisions as to the distribution after the death of the daughter of the residue of his real and personal estate amongst the children of his reputed daughter who attain the age of twenty-one, or being daughters previously marry, are, their Lordships think, very strongly in favour of the appellant. All that has been already said in commenting on what are called paragraphs 54 and 55, as to the incongruity of giving estates tail, and vesting portions at a period when Mrs. Rhodes, who took no interest in the bulk of this property, might be alive, and yet making them all contingent till her death, is applicable here, except that there is not in this part of the will an express reference to Mrs. Rhodes being alive at the time when the portion of a daughter vested on her marriage, for it is not here provided that the marriage shall take place with Mrs. Rhodes' assent.

And the bringing down and applying to the expectant shares of the children in the residue of the real and personal estate of the maintenance and education clauses, already given in what are called paragraphs 43 and 44, as to the bank shares and 10,000*l.*, are also strongly in favour of the appellant. Those clauses were very properly made applicable to the case of children being minors after the death of their mother, the

testator's daughter, and had not and could not have any reference to the life of Mrs. Rhodes. If the words of the so-called paragraph 64 are construed as confining the application of the words "after the decease of my wife" to the bequests and devises of property in which she took an interest, those maintenance and advancement clauses are very properly brought down and applied to the shares given to the children in the residue of the real and personal estate in which Mrs. Rhodes took no interest. If the words in the preamble are read as applying to all, and postponing the shares so long as Mrs. Rhodes lives, they are not applicable, and a child of the daughter who is left a minor on the death of her mother, though likely to have a very large portion, is left unprovided for so long as Mrs. Rhodes lives. This seems to their Lordships what the testator did not intend.

All absurdity and incongruity is removed if the words "leaving issue" and "without leaving issue" in the two preambles are construed as having been from the rest of the will shewn to have been used in the sense already indicated, and if the words "from and after the decease of my said wife" are construed as having been shewn to have been used as confined to such property as she took an interest in terminable at her death; construing it, as it is commonly said, distributively, or as it is perhaps more properly said, *reddendo singula singulis*. Whether it is proper to construe them as also meaning on the failure of the interest before her death is a question which does not arise yet, and may never arise, as Mrs. Rhodes may never marry. Their Lordships do not therefore decide this, though they wish to say that they are not to be understood as expressing an opinion against this construction.

Their Lordships do not think that, to construe a particular set of words *reddendo singula singulis* is properly to be called putting on them a meaning contrary to the plain and natural sense of the words; the subject-matter and context may be such as to make such a construction the most obvious and natural construction, though probably it requires some context to justify it. Much of the argument of the respondent was based

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upon *The King v. Ringstead* (19), which was the joint judgment of Mr. Justice Bayley, Mr. Justice Littledale and Mr. Justice Parke (afterwards Lord Wensleydale). It is said, "there is no doubt that, in furtherance of the manifest intention of the testator, general words which, taken in their ordinary grammatical sense, apply to the whole property devised, may be taken distributively, and that, *reddendo singula singulis*, they may be applied to that part of the property to which they appear by the context to be applicable, so as to suffer other property to which, in their grammatical sense, they would apply, to pass immediately. But, in order to warrant such a construction, it must appear manifestly from the other parts of the will that that was the intention." In *The King v. Ringstead* (19) the Court thought that it was not the intention. Their Lordships do not intend to express any opinion as to whether the Court were or were not right in so holding, nor as to whether they succeeded in reconciling their decision with others. It is enough for their Lordships to say that they are convinced that in this will it does appear manifestly from other parts of this will that such was the intention.

The result is that, in the opinion of their Lordships, the decree dismissing the appellant's suit should be reversed, and that instead thereof the Court should declare that, according to the true construction of the will, and in the events which have happened, the appellant has become entitled to the present enjoyment of the interest by the said will given to her for her life in all the undisposed of residue of the testator's real and personal estate, including therein Heaton Park estate, subject only to the foregoing devises, legacies, bequests and directions. They further think that the costs of all parties to all the proceedings in the colony, as well as of this appeal, as between solicitor and client, should be paid out of the estate. And they will humbly advise her Majesty in accordance with this opinion.

Solicitors—Paines, Layton & Pollock, for appellant; Lee, Bolton & Co., and Flower & Nussey, for respondent.

(19) 9 B. & C. 218.

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1882. { THE MELBOURNE BANKING CORPORATION (*appellants*) v. JOHN BROUGHAM (*respondent*).
March 11.

Victoria—Mortgagor and Mortgagee—Equity of Redemption—Release—Suit to set aside—Burden of Proof.

The respondent having mortgaged real estate became bankrupt. The official assignee in bankruptcy released the equity of redemption to the mortgagee in consideration of the debt due under the mortgage, and afterwards conveyed all his interest as official assignee to the respondent:—Held, in a suit by the respondent impeaching the release—first, that if the release was voidable, the right to set it aside was vested in the respondent; and secondly, that in such a suit the burden of proving the inadequacy of the consideration was on the respondent.

This was an appeal from a decree of the Supreme Court of Victoria, whereby the equity of redemption in a station, which had been mortgaged by the respondent to the appellants, was declared not barred by a release of the equity of redemption executed by the official assignee of the respondent in favour of the appellants, and that such equity of redemption was effectually conveyed to the respondent by a conveyance executed by the official assignee.

The facts were as follows:—

By an indenture dated the 18th of May, 1867, the respondent mortgaged to the appellants certain stations, to secure payment by the respondent to the appellants of certain moneys then owing by the respondent to the appellants.

In June, 1868, the appellants entered into possession of the mortgaged stations.

On the 26th of January, 1870, the estate of the respondent was sequestrated, and one John Goodman was appointed official assignee.

On the 30th of May, 1870, Goodman, as official assignee, by deed released the equity of redemption to the appellants, discharged from all right or equity of redemption. The deed contained recitals that there was then owing to the appellants the sum of 18,900*l.* on the security of

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the mortgage deed, and that the stations, stock and other mortgaged property were valued by the appellants at the sum of 15,000*l*.

Goodman died on the 16th of April, 1874, and one Jacomb was in February 1877 appointed in his stead official assignee of the respondent's estate.

On the 2nd of March, 1877, Jacomb, in pursuance of a contract made by Goodman, conveyed to the respondent all the estate vested in him as official assignee.

On the 22nd of June, 1877, the respondent commenced the suit against the appellants. The bill prayed that the release might be declared void as against him, and that an account might be taken of all moneys received by the appellants since the time when they first entered into possession of the mortgaged premises. The appellants pleaded to the bill.

On the 16th day of November, 1880, a decree was made in favour of the respondent.

From this judgment the appeal was brought.

Davey, Q.C., and *Dennistoun Wood*, for the appellants.—The respondent acquired no title to the equity of redemption of the mortgaged property by the assignment from his trustee. He had no title to institute the suit. The burden of proving the falsity of the accounts was upon the respondent. The respondent can only stand in the place of the assignee, and is bound by the admissions of the official assignee. The evidence is that the estate was valued at less than the debt. The release was in satisfaction of the debt.

They referred to *Sugden's Vendors and Purchasers* (11th ed. 218), *Waring v. Ward* (1) and *Adams v. Angell* (2).

Benjamin, Q.C., and *Everitt, Q.C.*, for the respondent.—If the release was not obtained by misrepresentations, it was executed under a mistake as to the facts and as to the real amount due to the appellants. The release was executed without sufficient consideration. At all events, the representation as to the value

of the estate cannot bind the assignee who is a trustee for the creditors.

They referred to *Stump v. Gaby* (3), *Webb v. Rorke* (4), *Ford v. Olden* (5), *Troup v. Ricardo* (6) and *Redgrave v. Hurd* (7).

THE LORD CHANCELLOR (LORD SELBORNE) delivered the judgment of their Lordships (8):—

This is an appeal from a decree of the Supreme Court of Victoria, setting aside a deed of release of the equity of redemption of a sheep station called "Alma" in that colony, which was mortgaged by the respondent, John Brougham, to the appellants, on the 18th of May, 1867, to secure a loan of 8,349*l*. 15*s*. then made to him, with interest and future advances. The appellants were in possession from April, 1868, and executed fencing works and other improvements on the station. Brougham became bankrupt on the 26th of January, 1870; and one John Goodman was appointed official assignee of his estate under the insolvent law of the colony. The release of the equity of redemption, set aside by the Court below, was executed by Goodman to the appellants on the 30th of May, 1870, in consideration of the full amount of the debt then claimed by the appellants as due on their security, which is stated in the deed at 18,900*l*. or thereabouts.

The respondent obtained his certificate three days after the date of this deed. On the 28th of May, 1871, the appellants sold the station to one Thomas James, for 21,000*l*., payable by instalments extending over three years. On the 13th of December, 1873, the respondent, according to his own statement, became aware of the release of the equity of redemption executed by Goodman to the appellants; and he then contracted with Goodman to purchase

(3) 2 De Gex, M. & G. 623.

(4) 2 Sch. & Lef. 673.

(5) 36 Law J. Rep. Chanc. 657; Law Rep. 3 Eq. 461.

(6) 4 De Gex, J. & S. 489; 34 Law J. Rep. Chanc. 91.

(7) 51 Law J. Rep. Chanc. 113; Law Rep. 20 Ch. D. 1.

(8) The Lord Chancellor (Lord Selborne); Sir Barnes Peacock; Sir Robert P. Collier; Sir Richard Couch; and Sir Arthur Hobhouse.

(1) 7 Ves. 332.

(2) 46 Law J. Rep. Chanc. 34; Law Rep. 8 Ch. D. 634.

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all the interest in his own estate, then remaining vested in Goodman, for 20l. Nothing was done, on the footing of this contract, till March, 1877. In the meantime (on the 16th of April, 1874) Goodman died; and it is stated in the judgment appealed from that in May, 1876, the station was resold by James and one Johnson (whom he had associated with himself as a partner) for 80,000l. On the 28th of February, 1877, a person named Jacomb was appointed official assignee in place of Goodman; and he, two days afterwards, in fulfilment of Goodman's contract with the respondent, conveyed to the respondent all the estate then vested in him under the insolvency.

It was contended at the bar that this conveyance was not sufficient to enable the respondent to institute a suit to set aside the release of May, 1870, from Goodman to the appellants; but, if that release was voidable in equity, it is clear, both on principle and on authority, that there was an equitable interest in the Alma station, which in 1877 continued to be part of the estate vested in the official assignee, and that the deed executed by Jacomb was sufficient to pass that interest. Their Lordships, therefore, do not doubt that the respondent, when he instituted this suit, had the same *locus standi in curia* which Jacomb would have had if the deed of the 2nd of March, 1877, had not been executed; and they regard the time at which and the circumstances under which the respondent took this conveyance from Jacomb as material only to the burden of proof properly incumbent upon the respondent as plaintiff in a suit by which a deed duly executed for valuable consideration is sought to be impeached on equitable grounds. At the best, the respondent can only stand in the shoes of Goodman, and he must have knowledge of the release which he seeks to set aside imputed to him, at least from the time when he admits that he acquired it.

This suit was instituted on the 22nd of June, 1877, by a bill which prayed for accounts against the appellants as mortgagees in possession; objecting to the sale to James, and seeking (in effect) to have the benefit of the subsequent resale. The release of May, 1870, was not mentioned

in the bill as originally framed, except as a defence expected to be set up by the appellants; and nothing was then alleged to impeach it, beyond a suggestion that Goodman, as official assignee, had no power or authority to execute such a release, and that it was void and of no effect as against the plaintiff.

To this bill the defendants pleaded the release of the 30th of May, 1870; but that plea was overruled by the colonial Courts, on the ground that it was *ultra vires* of the official assignee to execute any such release. The orders overruling the plea were reversed, on appeal, by Her Majesty in Council, their Lordships giving the parties liberty to make such additions to and amendments of their pleadings as they might be advised; and intimating that if the agreement and release, stated in the plea, were not the result of a fair and honest accounting and bargain, or were impeachable on the grounds of mistake or flagrant error, or of fraud upon the official assignee, or collusion between him and the bank to cheat the creditors, they might be questioned by proceedings proper for that purpose.

The respondent thereupon amended his bill, charging that the debt due by the plaintiff to the defendants on the 30th of May, 1870, did not amount to the sum of 18,900l. or thereabouts, but to a much smaller sum, and that the value of the station property at that time was at least 25,000l. or thereabouts, and that the deed of the 30th of May, 1870, was not the result of, or made and executed in pursuance of, any fair and honest accounting or bargaining between the appellants and Goodman, but that, on the contrary, Goodman was induced to make and execute that deed by the misrepresentations of the appellants and the other defendant Johnson (their manager), as to the amount of the debt then alleged to be due and owing by the plaintiff to the appellants, and as to the value of the station property; and that Goodman made and executed the deed relying on those misrepresentations, and not otherwise, and under mistake, believing the false representations so alleged to be made to be true; and that, if the appellants believed their own representations to be true, the deed was

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executed under a mutual mistake, and, if they did not, was obtained by fraud and misrepresentation on the part of the appellants. These were the grounds suggested in the amended bill for setting aside that deed. An answer to the bill, as so amended, was put in by the appellants on the 25th of April, 1880, in which all these allegations were denied, and which concluded by submitting to the Court that the plaintiff was not entitled to have any account taken of the mortgage debt due to the appellant on the 30th of May, 1870, as all accounts of the appellants in relation thereto had on that date been stated and settled between the appellants and Goodman; and the appellants thereby claimed the benefit of the deed of the 30th of May, 1870, as a settled account, as if it had been pleaded as such to the relief sought by the amended bill.

Evidence was taken on both sides; and on the 25th of February, 1881, Mr. Justice Molesworth made a decree in the respondent's favour, declaring that the equity of redemption of the mortgage of the 18th of May, 1867, was not barred by the release of the 30th of May, 1870; and directing, against the appellants, as mortgagees in possession, the accounts which that learned Judge thought properly consequential, under the circumstances, on that declaration. The present appeal is from that decree. The learned Judge, in the reasons given by him for this decree, stated his opinion to be that Goodman acted upon misrepresentations of the debt and of the value of the property made to him on behalf of the appellants, and that the release ought to be treated as without consideration and made in mistake. It is, therefore, necessary first to consider what the alleged representations were, and what evidence there is that they were not true in fact.

It was not, and it is not, alleged, that any other representations were made than those which are contained in a letter from Messrs. Nutt & Murphy (the appellants' solicitors) to Goodman, dated the 26th of May, 1870, in the following words:—

"The Melbourne Banking Corporation, Limited, are mortgagees from John Brougham of his Alma and Hartwood sta-

tions, and sheep thereon, now numbering about 20,000.

"The debt now due to the bank, under the mortgage, is about 18,900*l.*, and the bank values its security at 15,000*l.*

"We are instructed to ask you, as assignee of the estate, if you are prepared to take over the security at that value; or whether you will release the equity of redemption in the property mortgaged to the bank; and what evidence you would require of the amount of debt and value of the security.

"Requesting your early reply,

"We are, &c.,

"Nutt & Murphy."

To this letter Goodman replied on the same day in the following words:—

"I will convey the equity of redemption of this insolvent's estate to the bank at a valuation of 15,000*l.* If the bank requires to prove for the deficiency, this proceeding will have to be done at a meeting."

The appellants did not require to prove for the deficiency; and the deed itself, which bears date four days afterwards (the 30th of May, 1870), is sufficient *prima facie* evidence that they agreed, as is stated in their pleading, and also by their chairman, Sir Charles MacMahon, in his evidence, to waive all right of proof in consideration of the release of the equity of redemption. It proceeds upon the following recitals:—

"And whereas there is now due and owing to the said corporation the sum of 18,900*l.*, or thereabouts, on the security of the within-written indenture; and whereas the whole of the sheep runs or stations, chattels and premises which are comprised and described in or are now subject to the within-written indenture are valued by the said corporation at the sum of 15,000*l.* or thereabouts; and whereas the said John Goodman, being satisfied that the aforesaid sum of 18,900*l.* or thereabout is so due and owing to the said corporation as aforesaid, and that the present value of the property described and comprised in or now subject to the within-written indenture does not exceed the said sum of 15,000*l.*, has elected and agreed to execute the assignment to the said corporation which is hereinafter contained; and it purports to be executed in pursuance of

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that agreement, and in consideration of the sum of 18,900*l.* or thereabouts, so due and owing to the appellants.

Their Lordships are of opinion that, if the recitals in this deed were not true, it was for the respondent, who is *prima facie* bound by the admissions under seal of Goodman, from whom his title is derived, to prove their falsehood, and not for the appellants to establish their truth by affirmative evidence. The learned Judge in the Court below seems to have taken a different view, and to have held that it was the duty of the appellants to prove in detail by proper vouchers the correctness of the account, making out the debt of 18,900*l.* or thereabouts mentioned in the deed; and it appears to their Lordships that, so far at all events as the question of debt is concerned, this inversion of the *onus probandi* was the foundation of the decree. It does not clearly appear whether this opinion of the learned Judge was based upon any general assumption as to the burden of proof in all cases of this kind, or upon the special circumstances of this particular case. If he intended to affirm the general proposition that, whenever a release by a mortgagor to a mortgagee of an equity of redemption, in consideration merely of the amount of the debt, is impeached, the burden of justifying it rests upon the mortgagee, that doctrine would be opposed to the judgment of Lord Cottenham in *Knight v. Marjoribanks* (9). That was a case of a release, for no other consideration than the amount of the mortgage debt, of the equity of redemption of stations and stock in Van Diemen's Land, by one partner to others; and Lord Cottenham held, in conformity with the opinion of Lord St. Leonards in his *Treatise on Vendors and Purchasers*, that mortgagor and mortgagee were to be regarded, under such circumstances, until the contrary was shewn by the party impeaching the deed, as on the ordinary footing of vendor and purchaser. If, on the other hand, the learned Judge in the present case considered that the burden of proof was changed by the particular circumstances appearing in evidence, their Lordships are unable to agree with him in that opinion. .

(9) 2 Mac. & G. 10.

The suit was instituted seven years after the date of the transaction, and between four and five years after the time when, according to his own admission, it was known to the respondent. Goodman, who knew all the circumstances, was dead; and Johnson, who was then the appellant's manager, died while the evidence was being taken. The property which was the subject of the release was of a kind as to which Courts of equity expect reasonable promptitude of action from those who seek to disturb legal titles; and it had passed for more than six years out of the appellants' hands. The appellants, in the first schedule to their answer (filed on the 12th of November, 1877), set forth fully the particulars of all costs, charges, expenses, and payments which they claimed a right to charge (if the release should be set aside) under the mortgage; and their chairman, Sir Charles MacMahon, verified (as to his belief) the correctness of that account. No attempt was made by the respondent, in any part of the evidence, to shew that, in the account so stated, there was any fraud, overcharge or error; and there was only one item pointed out by the learned Judge in the Court below, or by the respondent's counsel at their Lordships' bar, as in appearance suspicious—namely, a sum of 5*l.* 5*s.*, charged as paid to "Goodman" on the 28th of May, 1870, two days before the deed of release. It is impossible for their Lordships (even if they ought to presume this to have been a payment to the official assignee) to assume, in the absence of evidence, that it might not have been satisfactorily explained if it had been challenged, which it was not. Besides the account thus set forth (as required by the bill) by way of schedule to the answer, the books of the appellants were produced by their present manager, Mr. Barlow, who was called as a witness by the respondent; and all such extracts from them as were thought material were put in as part of the respondent's evidence. Their Lordships do not say that these extracts ought on that account to be taken as establishing affirmatively the correctness of all entries contained in them; but no evidence whatever was offered to discredit them; and one of them (the exhibit W) shews in what manner the appellants

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arrived at the amount of their claim, as stated in the deed of release. That exhibit contains, not a personal account as between mortgagor and mortgagee, but an account between the appellants and the station, headed "Alma station (late Tom's Lake)"; and it is continued without break down to the time when the appellants ceased to have any interest in the station, by the completion of James's purchase. Mr. Justice Molesworth observed upon that fact; and it was also insisted upon at the bar, as if some inference adverse to the good faith of the transaction of May, 1870, ought to be drawn from it. But it appears to their Lordships that in a business like that of the appellants, such an impersonal account would naturally and properly be continued as long as they had the station on their hands, whether by a redeemable title, or by one which was not redeemable.

In that account (which was made up at varying rates of interest, generally much lower than 15 per cent., the rate secured by the mortgage deed, and with rests) the same items of charge (apart from interest) appear as in the first schedule to the appellants' answer; and the result is, that on the 21st of April, 1870, 18,820*l.* 17*s.* 6*d.* is there shewn as due from the mortgaged estate to the appellants, and on the 30th of May, 1870, 19,294*l.* 14*s.* 9*d.* The account so made out was more favourable to the respondent's estate than if it had been stated according to the strict terms of the mortgage deed, with 15 per cent. interest throughout; and it is evident to their Lordships, that it was from this account that the amount of "18,900*l.* or thereabouts," stated in the deed of release, was derived. It seems not improbable that this particular figure may have been arrived at some time before, and that it was not thought necessary to make up the account more exactly. If there was any error, it was (according to these books) rather in understating than in overstating the amount actually due.

It appears by the evidence, that Goodman was a man very well acquainted with business. He was trustee and inspector for the Australian Trust and Agency Company, the business of which consisted in lending money on station property. He was accustomed, as inspector for that com-

pany, to visit country stations, and to report what might be prudently advanced upon them; and he discharged this duty to their satisfaction from 1863 till the time of his death. Sir Charles MacMahon met him shortly before the date of the deed of release (whether before or after the 26th of May, 1870, is not clear) outside the appellants' bank, and was then told by him that he had been "looking through Brougham's accounts, and that the bank stood likely to make a loss"—a statement quite in accordance with the recitals of the deed.

It was strongly urged by the respondent's counsel at the bar that Goodman, as a trustee for Brougham and his creditors, did not properly discharge his duty; that he ought to have done something more than look through the accounts in the bank books, and to have taken some steps, which (so far as appears) he did not take, to ascertain, by a personal inspection of the station or otherwise, the value of the mortgaged property; and that, from the fact that the release was executed only four days after Messrs. Nutt & Murphy's letter of the 26th of May, and that in his own reply to that letter (on the very day when he received it) he expressed his readiness "to convey the equity of redemption at a valuation of 15,000*l.*," the appellants must be deemed to have had notice that he, being a trustee, neglected his duty. Their Lordships think that if the respondent had intended to rely upon a breach of trust by Goodman, with notice of it to the appellants, that case ought to have been made by his bill; which it is not. But, even if such a case were open upon the respondent's pleading, their Lordships find no evidence, either of any breach of trust, in fact, or of any notice of it to the appellants. It was certainly not for the appellants to presume that Goodman did or would neglect his duty. What steps he may actually have taken to satisfy himself on the points mentioned in the recitals of the deed, or when exactly he took them, it was impossible, when he was no longer living, to ascertain. It by no means follows, because the letter of Messrs. Nutt & Murphy and his reply were written on the 26th of May, 1870, that he had previously no information on the subject.

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The contrary is probable, this station being the only large asset mentioned in the respondent's schedule, filed four months before. Goodman had been with the respondent's witness, Patrick William Brougham, at Tom's Lake, adjoining the Alma station, in February, 1869, and he had then "crossed about four miles of Alma station." Mr. Justice Molesworth himself thought that "he might have obtained sufficient information without leaving Melbourne." There is, therefore, in their Lordships' opinion, no reason for drawing any inference unfavourable to Goodman's conduct, either from the terms of the letters, or from the date of the deed; and the result is, that there is, in their judgment, no ground for relieving the respondent from the burden of proving the misrepresentations alleged in his amended bill, which, so far as relates to the amount of the mortgage debt, he has not even attempted to do.

There remains only the other alleged misrepresentation, as to value; and this might be very shortly disposed of by the mere fact that no representation on this subject was ever made by the appellants, except that they themselves "valued their security at 15,000*l*." This is not a representation by which anybody could possibly be misled or deceived; and even if evidence were given tending to shew that 15,000*l*. was less than the true value of the property, mere under-value would not alone be a sufficient ground, as Lord Cottenham said in *Knight v. Marjoribanks* (10), for impeaching the transaction. Their Lordships, however, are of opinion, not only that the respondent's evidence fails to throw any real doubt upon the good faith of the estimate of value stated in Messrs. Nutt & Murphy's letter, but that, if on that point the burden of proof had rested upon the appellants, they would have satisfied it. Sir Charles MacMahon (whom Mr. Justice Molesworth exonerates from all intentional deceit) swore that he thought 15,000*l*. was a fair value for the station at the time of the dealing with Goodman, and that the appellants would have sold it for that price. The consideration for the release was not 18,000*l*., the amount of that estimate, but was the whole amount of the mortgage debt, then

stated at 18,900*l*., and really standing in the books of the bank at more than 19,000*l*.. The appellants had offered to sell the property to Goodman for the amount they put upon it, 15,000*l*., which offer he declined; and their Lordships cannot admit the force of the argument that he could not have found the means of paying such a sum, whatever might be the true value of the property. He was a man of business; and if the value to sell had been anything like the amount alleged by the respondent and some of his witnesses, their Lordships see no reason to doubt that an advance of the necessary funds might have been obtained; especially as it is not shewn that the appellants would have refused to allow reasonable time for that purpose. The witness Richardson proves that Johnson, the appellants' manager (at a time not accurately fixed), mentioned the property to him as for sale at 15,000*l*., but Richardson was not then disposed to buy. In March, 1871, when the account against the station still stood in the bank books at more than 18,000*l*., the appellants offered it to one Chirside for that sum; that offer remained for some time open, but it was eventually declined. The sale eventually made to James, on the 28th of May, 1871, was on terms not much (if at all) more favourable, considering the length of credit allowed; and the debt then stood in the bank books at 21,050*l*. 18*s*. 9*d*. In the value of a speculative property of this kind, every year may make a very material difference. Against these facts the respondent has offered no evidence, except the opinions of certain stock and station managers opposed to other opinions as to value adduced on the appellants' part; all which their Lordships think it their duty to disregard, as immaterial to the true issue in the case, which is one of misrepresentation, mistake or fraud. Great stress was laid in the judgment below, and in the argument for the respondent, upon the evidence of one particular witness named Atkins, who took delivery of the station for the appellants in April, 1868, and who said that he valued for the bank when he took delivery at 1*l*. per head (which was equal to 20,000*l*.), and so informed the manager; and it was urged that the value must have

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increased, partly by reason of the appellants' improvements and partly because this station did not suffer, like others near it, from drought, between April, 1868, and the 30th of May, 1870. Atkins, however, remained in the appellants' service for little more than one month; and there is no proof, either that his estimate in April, 1868, was really trustworthy and correct, or that the appellants so regarded it. On the contrary, there is the evidence of Mr. Peck, a stock and station agent, who in 1869 offered the Alma station for sale, advertising it on the 27th of August, 1869. It was put up in the usual way, but was not sold, no offer being made for it; and he says that before 1870 station property in the Alma district "was almost unsaleable." A bank like the appellants' not only may, but in the proper course of their business must, endeavour to realise property on which they have advanced money, without any burdensome delay; and their Lordships see no sufficient ground for believing that the appellants could have practically realised in May, 1870, more than the amount at which they then estimated the Alma station; still less more than the true amount of their debt then due upon it, which was the actual consideration for the release.

Their Lordships will therefore humbly advise Her Majesty that the decree of Mr. Justice Molesworth ought to be reversed, and the respondent's bill dismissed with costs; and the respondent must pay the costs of the appeal.

Solicitors—Murray, Hutchins & Stirling, for appellants; Keen & Rogers, for respondent.

1882. { THE MUSSOORIE BANK (*appellants*) v. ALBERT CHARLES
March 21. { RAYNOR (*respondent*).

Will—Construction—Precatory Trust—Leave to Appeal—Application to Rescind—Practice.

A testator bequeathed the whole of his property to his wife, "feeling confident that she will act justly to our children in dividing the same when no longer required

by her":—Held, that the words in favour of the children did not operate as a precatory trust, and that the wife took an absolute interest in the testator's property.

Although an Order in Council granting leave to appeal may be rescinded at any time, it is the duty of a respondent to apply to rescind such order as soon as possible.

This was an appeal from a judgment of the High Court of the North Western Provinces of Bengal, by which a decree of the subordinate Judge of Mussoorie was reversed.

The circumstances under which the suit arose were as follows:—

The respondent's father, Captain Raynor, died on the 13th of December, 1860, possessed, among other effects, of shares in the Delhi Bank.

By his will he appointed his son and his wife, the respondent's mother, his executor and executrix.

The disposition of his estate was as follows:—"I give to my dearly beloved wife, Mary Anne Raynor, the whole of my property, both real and personal, including my Government promissory notes, Delhi Bank shares, my house at Feroz-pore, No. 50, together with all my plate and plated ware, and whatever money, furniture, carriages, horses, &c., may be in my possession at the time of my decease, together with all moneys due, or which may afterwards become due, feeling confident that she will act justly to our children in dividing the same when no longer required by her." Probate of that will was granted to Mrs. Raynor alone. On the 21st of March, 1871, Mrs. Raynor applied to the appellants for a loan, and offered as security two estates at Mussoorie, two houses at Dehra, and the Delhi Bank shares. On the same day a mortgage bond was executed by her to the appellants. Mrs. Raynor died, having made her will, by which she left all her property among her children. To her son, the respondent, she left her shares in the Delhi Bank. The appellants had attached the shares in the Delhi Bank.

The object of the present suit was to get rid of the attachment on these shares which the respondent claimed under his

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father's and mother's wills respectively, on the ground that, under Captain Raynor's will, his widow had only a life interest in them and power of appointment, and that, in bequeathing them to the respondent, she had completed the trust created by her husband's will.

The appellants disputed this construction of the will.

The subordinate Judge delivered judgment on the 10th of May, 1878, dismissing the suit, holding that, under Captain Raynor's will, his widow took an absolute interest in the shares, and that they were, therefore, liable for her debts. The respondent appealed to the High Court, and that Court reversed the decree of the First Court.

The date of the judgment of the High Court was the 2nd of January, 1878, and the period for appealing to Her Majesty in Council expired on the 6th of July following.

The appellants obtained special leave to appeal.

Doyle moved, on behalf of the respondent, to rescind the order, and referred to *Ram Sabuk Bose v. Monomohini Dossee* (1).

J. Graham, Q.C., contra.

Their Lordships intimated that they would hear the appeal.

J. Graham, Q.C., and Woodroffe, for the appellants.—The testator's will operated to give an absolute interest to his wife; no trust was created in favour of his children. If it be assumed that a trust in favour of the children was capable of being enforced in the event of the widow not requiring the subject-matter thereof for her own use, she had in fact dealt with the shares in question. They referred to *Lambe v. Eames* (2), *Sale v. Moore* (3), *Stead v. Miller* (4) and *In re Hutchinson* (5).

Doyle, for the respondent.—The effect of the testator's will is to create a life estate in the wife, with a power of appointment amongst the testator's children.

He referred to *Knight v. Knight* (6) and *Le Marchant v. Le Marchant* (7).

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (8):—

In this case their Lordships have felt almost more difficulty in deciding whether or not to hear the appeal than they have in disposing of it when heard, and in order to shew the nature of that difficulty it is necessary to state the precise course which this litigation has taken.

In the month of December, 1839, Captain William Raynor died, having left a will, which he expressed in the following terms:—"I give to my dearly beloved wife, Mary Anne Raynor, the whole of my property, both real and personal, including my Government promissory notes, Delhi Bank shares, my house at Ferozepore, No. 50, together with all my plate and plated ware, and whatever money, furniture, carriages, horses, &c., may be in my possession at the time of my decease, together with all moneys due or which may afterwards become due, feeling confident that she will act justly to our children in dividing the same when no longer required by her." And he appointed his son, William Joseph Raynor, and his wife, Mary Anne Raynor, to be his executors. Mrs. Raynor alone proved the will.

During her lifetime no question arose as to the true nature of Captain Raynor's will. It appears that she possessed herself of his property, and she assumed to deal with it as though it were her own. On the 5th of September, 1868, Mrs. Raynor made her will, by which she gave to her son, Albert Charles Raynor, who is the respondent in this appeal, "twenty-four of my shares in the Delhi and London Bank," and she also gave him a house and some land. Other property, consisting mainly of houses and land and of Government rupee paper, she gave partly to her daughter, Adelaide Louisa Swetenham, partly to her son, William Joseph Raynor, and partly to her step-daughter, Elizabeth Goodling. To the latter was given the

(1) Law Rep. 2 Ind. App. 81.

(2) Law Rep. 10 Chanc. 267.

(3) 1 Sim. 534.

(4) 46 Law J. Rep. Chanc. 800; Law Rep. 5 Ch. D. 225.

(5) Law Rep. 8 Ch. D. 540.

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(6) 3 Beav. 172.

(7) Law Rep. 18 Eq. 414.

(8) Sir Barnes Peacock; Sir Richard Couch, and Sir Arthur Hobhouse.

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house No. 50 at Ferozepore, which the testatrix describes as "my house and estate." Mrs. Raynor died some time in 1875, and her will was proved—it does not appear by whom.

In the year 1876 the Mussoorie Bank, who are the appellants, instituted two suits against Mrs. Raynor's executors, for the purpose of recovering the sum of Rs. 25,000 advanced by the bank to Mrs. Raynor upon the security of thirty Delhi Bank shares and of certain houses. One of these suits, No. 41, of 1876, was instituted in the Small Cause Court at Dehra Doon, and on the 5th of December, 1876, the bank obtained a decree under which the thirty shares were attached. The other suit, No. 115, of 1876, instituted before the Subordinate Judge of Dehra Doon, was to enforce the bank's mortgage upon the houses. On the 12th of December, 1876, the bank obtained a money decree for the sum of Rs. 32,121 2s. 4p., but the Subordinate Judge refused to give them any specific relief on the basis of the mortgage. His principal reason appears to have been that the nature and extent of Mrs. Raynor's interest in the mortgaged properties was uncertain.

Against this decision the bank appealed to the High Court, who gave judgment on the 2nd of January, 1878. They held that Mrs. Raynor certainly had some interest in the properties she mortgaged to the bank; that she might have had an absolute interest in them, especially as she had acquired them after Captain Raynor's death; and that the bank was entitled to enforce its security against whatever interests might ultimately prove to be hers. They varied the decree accordingly. As regards the interest which Mrs. Raynor had in the properties the High Court pronounced no opinion, holding—quite rightly as their Lordships think—that the question did not arise in a suit in which Captain Raynor's estate was not properly represented.

While the appeal in the mortgage suit was pending, Albert Raynor brought the present suit for the purpose of setting aside the order of the 5th of December, 1876, so far as regards the twenty-four bank shares bequeathed to him by his mother,

and of obtaining possession of those shares. The identity of the shares with the shares bequeathed by Captain Raynor may be assumed for the present purpose; and the case made by the respondent is that Mrs. Raynor took only a life interest in her husband's property. On the 10th of May, 1878, the Subordinate Judge dismissed the suit, holding that Mrs. Raynor took an absolute interest under her husband's will. Albert Raynor appealed, and on the 22nd of August, 1878, the High Court gave him a decree, on the ground that Mrs. Raynor held her husband's estate, not absolutely in her own right, but as trustee for their children, with a power of appointment among them.

The bank then applied to the High Court for leave to appeal against this decree. On the 13th of January, 1878, the High Court refused leave, on the ground that the property at stake in this suit was valued at no more than Rs. 6,000, and that the question of law was so clear that an appeal could only result in the affirmance of the judgment.

The bank then presented a petition to Her Majesty in Council for leave to appeal, on which leave was granted by an Order in Council dated the 14th of August, 1879. And it is the frame of that petition that gives rise to the preliminary question now raised. Waiving all questions as to the honesty of the petitioners, the respondent's counsel insists that, in fact, their petition is so framed as to mislead this Board, and to bring it to a favourable decision on false grounds.

The petition states the petitioners' mortgage suit, No. 115, of 1876, and it states the effect of the decree of the High Court therein; but it does not give the date of that decree. Then it goes on to state that under that decree the bank shares were attached; that Albert Raynor objected; that his objection was overruled; and that thereupon he brought the present suit. The proceedings in the present suit are correctly stated; but it is not true that the bank shares were attached under the decree in the mortgage suit, or that Albert Raynor's objection and suit directly struck at any portion of the decree in the mortgage suit. The shares were attached in the suit relating to them alone, which was

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valued at Rs. 6,000 only; whereas the mortgage suit was of greater value.

The first question is, whether the preliminary objection is taken too late. The order was made more than two years ago, and the respondents were fully aware of it; yet no objection was made until all the costs of the appeal had been incurred. As a general rule, the proper course in a case like the present is for the respondent to move as early as possible to rescind the Order in Council; and their Lordships think it right to call attention to the opinion expressed in the second volume of the *Law Reports, Indian Appeals*, p. 82. It is there said, "In their Lordships' opinion an objection of this kind ought to be taken by the respondents as early as the matter is brought to their notice, for the plain reason that if the leave to appeal is on that ground rescinded, no further costs are incurred; and it is wrong to leave the objection until the hearing of the appeal, when the record has been sent from India, and when all the costs attending the hearing have been incurred." At the same time their Lordships desire it to be distinctly understood that an Order in Council granting leave to appeal is liable at any time to be rescinded with costs, if it appear that the petition upon which the order was granted contains any misstatement, or any concealment of facts which ought to be disclosed.

In this case, if their Lordships had any reason to think that there were intentional mis-statements in the petition, they would at once rescind the order and dismiss the appeal. But they do not think there was any intention to mislead. The appellant's solicitor has filed an affidavit shewing how he confused the decree of the 12th of December made in the mortgage suit, with the decree of the 5th of December under which the shares were attached; and it appears that he did not leave the judgment of the 12th of December to be explained solely by the petition, because a copy of it was among the papers put in with the petition. Still if there has been a material mis-statement, it is not sufficient to clear the case of bad faith. To use the words of Lord Kingsdown (9), "Where there is

(9) *Mohun Lal Sookul v. Beeber Doss and Others*, 8 Moore, *Indian Appeals*, 195.

an omission of any material facts, whether it arises from improper intention on the part of the petitioner, or whether it arises from accident or negligence, still the effect is just the same if this Court has been induced to make an order which, if the facts were fully before it, it would not, or might not, have been induced to make." Their Lordships therefore proceed to ask whether the order in question was one which they might not have been induced to make if the facts had been fully and truly stated.

The grounds which the petitioner relies on as reasons why an appeal shall be allowed, notwithstanding the value of the suit is only Rs. 6,000, are three in number—first, that the decision virtually affects the right of the bank to have a mortgage security for the whole sum of Rs. 32,000 odd; secondly, that the point of law decided by the High Court will cover other claims arising in reference to the estate of Mrs. Raynor; and thirdly, that the decision on appeal in this suit will probably prevent any appeal against the decree in the mortgage suit, or against the proceedings in execution thereof. Their Lordships consider that the first two grounds are solid grounds for granting the leave asked; and they are not at all affected by the error in the petition. It is clear that if Mrs. Raynor took only a life interest in her husband's property, the bank cannot enforce their decree against any portion of the property enjoyed by her in her lifetime, whether comprised in the mortgage or not, unless they successfully contest against the Raynor family, as to each such portion, the question whether or no it belonged to Captain Raynor or was purchased with his assets. The third ground is affected by the mis-statements in the petition—first, because the date of the decree in the mortgage suit is not given, and therefore it does not appear on the face of the petition that the time for appealing had, as in fact it had, then expired; secondly, because the decree obtained by Albert Raynor appears to be more directly mixed up with the mortgage suit, when it is stated that the shares were attached under that very decree, than when they are shewn to be attached under a decree in a different suit. Still there is a sense in which the third ground may be explained. It is impossible

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to suppose that, after the decision of the High Court in this suit, any effectual proceeding could be taken by way of simple execution of the decree in the mortgage suit, for all purchasers would be deterred by the knowledge that they were buying a formidable litigation. It certainly would be necessary for the bank to frame a new suit, properly constituted for the purpose of contesting all questions with the Raynor family and seeking execution of their decree against them. In such a suit as that, the construction of the will might, and probably would, be brought by appeal before this board. And it might possibly, though probably it would not, be found necessary for properly working an appeal in a subsidiary suit of that kind to obtain leave to appeal from the original decree the execution of which was being prosecuted.

Their Lordships are of opinion that the petition is very faulty, and that due care was not shewn in its preparation; but on examining the grounds for asking leave to appeal, they do not think that any different conclusion would or could have been arrived at if the strictest accuracy had been observed. Their Lordships also were, when hearing the preliminary objection, strongly impressed with the circumstance that there was *prima facie* strong ground for an appeal upon the merits. For these reasons they have thought it right to hear the appeal.

Passing to the merits of the case, their Lordships are of opinion that the current of decisions now prevalent for many years in the Court of Chancery shews that the doctrine of precatory trusts is not to be extended; and it is sufficient for that purpose to refer to the judgments given by Lord Justice James in the case of *Lambe v. Eames* (2), and by Sir George Jessel in the case of *In re Hutchinson and Tenant* (5). They are further of opinion, that if the doctrine of precatory trusts were applied to the present case, it would be extended far beyond the limits to which any previous case has gone. No case has been cited, and probably no case could be cited, in which the doctrine of precatory trusts has been held to prevail when the property said to be given over is only given when no longer required by the first taker.

Now these rules are clear with respect

to the doctrine of precatory trusts, that the words of gift used by the testator must be such that the Court finds them to be imperative on the first taker of the property, and that the subject of the gift over must be well defined and certain. If there is uncertainty as to the amount or nature of the property that is given over, two difficulties at once arise. There is not only difficulty in the execution of the trust because the Court does not know upon what property to lay its hands, but the uncertainty in the subject of the gift has a reflex action upon the previous words, and throws doubt upon the intention of the testator, and seems to shew that he could not possibly have intended his words of confidence, hope, or whatever they may be—his appeal to the conscience of the first taker—to be imperative words.

In this case nothing is given over to the children of the testator except by an expression of confidence in his wife that she will deal justly in dividing the property among them, and that she will do it when the property is no longer required by her. If the testator had given to his children such property as was not required by his wife, or if he had given over his property if it was not required by his wife, the gift over would, according to a very well-known and well-established class of cases, have been void, because of the uncertainty. It would have been void, not merely because the words of gift over were precatory only, but it would have been void notwithstanding that the most direct and precise words of gift over might be used. Their Lordships think that substantially the words "when no longer required by her" must in this will be taken to have the same meaning as if he had said, "I give to my children so much as is not required by her." Considering the nature of the property, which includes a number of articles as to some of which the use is equivalent to the consumption; to the nature of the first gift, which, although not expressed in terms to be an absolute gift, is quite unlimited, and is legally an absolute gift; and to the fact that the first gift is only cut down by words which do not constitute a direct gift, but are to operate through an influence upon the conscience and feelings of the wife,

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their Lordships cannot come to any other conclusion than that the testator intended his wife to use the property according to her requirements. That is equivalent to an absolute gift to the wife.

They do not think it necessary therefore to enter into a consideration of the various authorities which have been cited as to the application of the doctrine of precatory trusts, or nicely to weigh one authority against another. They consider it sufficient to say that upon this will the wife took an absolute interest, and that to apply the doctrine of precatory trusts to it would be a very large extension of that doctrine.

The result is, that their Lordships will humbly advise Her Majesty to reverse the decree of the High Court, and to substitute for it a decree dismissing the appeal to the High Court with costs; but with respect to the costs of the present appeal they think it right to follow the case of *Ram Sabuk Bose v. Monomohini Dossee* (1); and having regard to the nature of the petition presented for leave to appeal, and the course pursued by the appellants, they will give no costs of the appeal. The money which has been deposited will be returned to the appellants.

Solicitors—Carpenter & Sons, for appellants;
Watkins & Lattey, for respondent.

1882. } CHARLES RUSSELL (*appellant*)
June 23. } v. THE QUEEN (*respondent*).

Canada — New Brunswick — British North America Act, 1867, ss. 91 and 92 — Construction — Dominion Parliament — Powers of — Intoxicating Liquors — Prohibitory Sale of.

The British North America Act, 1867, by section 91, provides that the Parliament of Canada may make laws for the peace, order and good government of Canada.

Section 92 provides that the Legislatures of the Provinces may exclusively make laws relating to shops, saloons, taverns and other licences in order to the raising of a

revenue, or relating to property and civil rights in the province, or relating to matters of a merely local or private nature :—

Held, that an Act regulating the sale of intoxicating liquors throughout Canada was not a matter exclusively assigned to the Provincial Legislatures, but was a matter within the powers of the Parliament of Canada.

This was an appeal from a judgment of the Supreme Court of the Province of New Brunswick.

The appellant was a saloon-keeper in the city of Fredericton, and he was on the 8th of January, 1881, summoned for that he did at the city aforesaid unlawfully sell, barter and dispose of intoxicating liquors, contrary to the Canada Temperance Act, 1878.

At the hearing the appellant appeared and pleaded "Not guilty." It was then proved on behalf of the prosecution that the Canada Temperance Act, 1878, had, on the 1st of May, 1879, been brought into force in the city of Fredericton, pursuant to the provisions of the Act. It was also proved that the appellant did at that city sell, barter and dispose of intoxicating liquors contrary to the provisions of the Act.

The appellant submitted, as matter of law, that the magistrate had no jurisdiction in the matter, on the ground that it was not within the powers of the Dominion Parliament of Canada to enact the Canada Temperance Act, 1878. The magistrate overruled the objection and convicted the appellant of the offence, and adjudged him to pay a fine of 100 dollars.

The appellant applied to the Supreme Court of the province, and obtained a rule nisi for a writ of *certiorari* to remove the conviction into that Court, with a view to the same being quashed, which rule was subsequently, after argument, discharged by that Court.

The Supreme Court gave judgment for the prosecution, because they considered themselves bound by the authority of a decision of the Supreme Court of Canada, in a case of *The City of Fredericton v. The Queen* (1).

(1) Supreme Court of Canada Rep. vol. 3, p. 505.

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From this judgment the present appeal was brought.

Benjamin and R. Brown, for the appellant.—The Parliament of Canada had no power to enact the Canada Temperance Act, 1878. The Act had no legal force in the Province of New Brunswick. The provisions of that Act relate to matters which fall within the subjects referred to in section 92 of the British North America Act, 1867, which belong exclusively to the Provincial Legislature. The rule of construction is laid down in *The Citizens' Insurance v. Parsons* (2).

Maclaren, Q.C. (Canadian Bar), and *Fullarton*, for the respondent.—The Canada Temperance Act, 1878, is a law for the peace, order and good government of Canada. It is not a matter coming within any of the subjects assigned exclusively to the Legislatures of the Provinces. It is not *ultra vires*, and is therefore valid and binding.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (3):—

This is an appeal from an order of the Supreme Court of the Province of New Brunswick, discharging a rule *nisi* which had been granted on the application of the appellant for a *certiorari* to remove a conviction made by the police magistrate of the city of Fredericton against him, for unlawfully selling intoxicating liquors, contrary to the provisions of the Canada Temperance Act, 1878.

No question has been raised as to the sufficiency of the conviction, supposing the above-mentioned statute is a valid legislative Act of the Parliament of Canada. The only objection made to the conviction in the Supreme Court of New Brunswick, and in the appeal to Her Majesty in Council, is that, having regard to the provisions of the British North America Act, 1867, relating to the distribution of legislative powers, it was not competent for the Parliament of Canada to pass the Act in question.

(2) *Ante*, p. 11; Law Rep. 7 App. Cas. 96.

(3) Sir Barnes Peacock; Sir Montague E. Smith; Sir Robert P. Collier; Sir James Hannen, and Sir Richard Couch.

The Supreme Court of New Brunswick made the order now appealed from in deference to a judgment of the Supreme Court of Canada in the case of *The City of Fredericton v. The Queen* (1). In that case the question of the validity of the Canada Temperance Act, 1878, though in another shape, directly arose, and the Supreme Court of New Brunswick, consisting of six Judges, then decided, Mr. Justice Palmer dissenting, that the Act was beyond the competency of the Dominion Parliament. On the appeal of the City of Fredericton, this judgment was reversed by the Supreme Court of Canada, which held, Mr. Justice Henry dissenting, that the Act was valid. The present appeal to Her Majesty is brought, in effect, to review the last-mentioned decision.

The preamble of the Act in question states that "it is very desirable to promote temperance in the Dominion, and that there should be uniform legislation in all the provinces respecting the traffic in intoxicating liquors." The Act is divided into three parts. The first relates to "proceedings for bringing the second part of this Act into force;" the second to "prohibition of traffic in intoxicating liquors;" and the third to "penalties and prosecutions for offences against the second part."

The mode of bringing the second part of the Act into force, stating it succinctly, is as follows: On a petition to the Governor in Council, signed by not less than one-fourth in number of the electors of any county or city in the Dominion qualified to vote at the election of a member of the House of Commons, praying that the second part of the Act should be in force and take effect in such county or city, and that the votes of all the electors be taken for or against the adoption of the petition, the Governor-General, after certain prescribed notices and evidence, may issue a proclamation, embodying such petition, with a view to a poll of the electors being taken for or against its adoption. When any petition has been adopted by the electors of the county or city named in it, the Governor-General in Council may, after the expiration of sixty days from the day on which the petition was adopted, by Order in Council published in the *Gazette*,

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declare that the second part of the Act shall be in force and take effect in such county or city, and the same is then to become of force and take effect accordingly. Such Order in Council is not to be revoked for three years, and only on like petition and procedure.

The most important of the prohibitory enactments contained in the second part of the Act is section 99, which enacts that, "from the day on which this part of this Act comes into force and takes effect in any county or city, and for so long thereafter as the same continues in force therein, no person, unless it be for exclusively sacramental or medicinal purposes, or for *bona fide* use in some art, trade or manufacture, under the regulation contained in the fourth sub-section of this section, or as hereinafter authorised by one of the four next sub-sections of this section, shall, within such county or city, by himself, his clerk, servant or agent, expose or keep for sale, or directly or indirectly, on any pretence or upon any device, sell or barter, or in consideration of the purchase of any other property give, to any other person, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating."

Sub-section 2 provides that "neither any licence issued to any distiller or brewer" (and after enumerating other licences), "nor yet any other description of licence whatever, shall in any wise avail to render legal any act done in violation of this section."

Sub-section 3 provides for the sale of wine for sacramental purposes, and sub-section 4 for the sale of intoxicating liquors for medicinal and manufacturing purposes, these sales being made subject to prescribed conditions.

Other sub-sections provide that producers of cider, and distillers and brewers, may sell liquors of their own manufacture in certain quantities, which may be termed wholesale quantities, or for export, subject to prescribed conditions, and there are provisions of a like nature with respect to vine-growing companies and manufacturers of native wines.

The third part of the Act enacts (section 100) that whoever exposes for sale or sells

intoxicating liquors in violation of the second part of the Act shall be liable, on summary conviction, to a penalty of not less than 50 dollars for the first offence, and not less than 100 dollars for the second offence, and to be imprisoned for a term not exceeding two months for the third and every subsequent offence; all intoxicating liquors in respect to which any such offence has been committed to be forfeited.

The effect of the Act when brought into force in any county or town within the Dominion is, describing it generally, to prohibit the sale of intoxicating liquors, except in wholesale quantities, or for certain specified purposes, to regulate the traffic in the excepted cases, and to make sales of liquors in violation of the prohibition and regulations contained in the Act criminal offences, punishable by fine, and for the third or subsequent offence by imprisonment.

It was in the first place contended, though not very strongly relied on, by the appellant's counsel, that assuming the Parliament of Canada had authority to pass a law for prohibiting and regulating the sale of intoxicating liquors, it could not delegate its powers, and that it had done so by delegating the power to bring into force the prohibitory and penal provisions of the Act to a majority of the electors of counties and cities. The short answer to this objection is that the Act does not delegate any legislative powers whatever. It contains within itself the whole legislation on the matters with which it deals. The provision that certain parts of the Act shall come into operation only on the petition of a majority of electors does not confer on these persons power to legislate. Parliament itself enacts the condition and everything which is to follow upon the condition being fulfilled. Conditional legislation of this kind is in many cases convenient, and is certainly not unusual, and the power so to legislate cannot be denied to the Parliament of Canada, when the subject of legislation is within its competency. Their Lordships entirely agree with the opinion of Chief Justice Ritchie on this objection. If authority on the point were necessary, it will be found in the case of *The Queen v. Burah* (4), lately before this Board.

(4) Law Rep. 3 App. Cas. 889.

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The general question of the competency of the Dominion Parliament to pass the Act depends on the construction of the 91st and 92nd sections of the British North America Act, 1867, which are found in part 6 of the statute, under the heading "Distribution of Legislative Powers."

The 91st section enacts: "It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated;" then after the enumeration of twenty-nine classes of subjects, the section contains the following words:—"And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislature of the Province."

The general scheme of the British North America Act with regard to the distribution of legislative powers, and the general scope and effect of sections 91 and 92, and their relation to each other, were fully considered and commented on by this Board in the case of *The Citizens' Insurance Company v. Parsons* (2). According to the principle of construction there pointed out, the first question to be determined is, whether the Act now in question falls within any of the classes of subjects enumerated in section 92, and assigned exclusively to the Legislatures of the Provinces. If it does, then the further question would arise, namely, whether the subject of the Act does not also fall within one of the enumerated classes of subjects in section 91, and so does not still belong to the Dominion Parliament.

But if the Act does not fall within any of the classes of subjects in section 92, no further question will remain, for it cannot be contended, and indeed was not contended at their Lordships' bar, that if the Act does not come within one of the classes of subjects assigned to the Provincial Legislatures, the Parliament of Canada had not, by its general power "to make laws for the peace, order and good government of Canada," full legislative authority to pass it.

Three classes of subjects enumerated in section 92 were referred to, under each of which, it was contended by the appellant's counsel, the present legislation fell. These were:—

9. Shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for provincial, local or municipal purposes.

13. Property and civil rights in the province.

16. Generally all matters of a merely local or private nature in the province.

With regard to the first of these classes, No. 9, it is to be observed that the power of granting licences is not assigned to the Provincial Legislatures for the purpose of regulating trade, but "in order to the raising of a revenue for provincial, local or municipal purposes."

The Act in question is not a fiscal law; it is not a law for raising revenue; on the contrary, the effect of it may be to destroy or diminish revenue; indeed it was a main objection to the Act that in the city of Frederickton it did in point of fact diminish the sources of municipal revenue. It is evident, therefore, that the matter of the Act is not within the class of subject No. 9, and consequently that it could not have been passed by the Provincial Legislature by virtue of any authority conferred upon it by that sub-section.

It appears that by statutes of the Province of New Brunswick authority has been conferred upon the municipality of Frederickton to raise money for municipal purposes by granting licences of the nature of those described in No. 9 of section 92, and that licences granted to taverns for the sale of intoxicating liquors were a profitable source of revenue to the municipality. It was contended by the appel-

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lant's counsel, and it was their main argument on this part of the case, that the Temperance Act interfered prejudicially with the traffic from which this revenue was derived, and thus invaded a subject assigned exclusively to the Provincial Legislature. But, supposing the effect of the Act to be prejudicial to the revenue derived by the municipality from licences, it does not follow that the Dominion Parliament might not pass it by virtue of its general authority to make laws for the peace, order and good government of Canada. Assuming that the matter of the Act does not fall within the class of subject described in No. 9, that sub-section can in no way interfere with the general authority of the Parliament to deal with that matter. If the argument of the appellant that the power given to the Provincial Legislatures to raise a revenue by licences prevents the Dominion Parliament from legislating with regard to any article or commodity which was or might be covered by such licences were to prevail, the consequence would be that laws which might be necessary for the public good or the public safety could not be enacted at all. Suppose it were deemed to be necessary or expedient for the national safety, or for political reasons, to prohibit the sale of arms or the carrying of arms, it could not be contended that a Provincial Legislature would have authority, by virtue of sub-section 9 (which alone is now under discussion), to pass any such law, nor, if the appellant's argument were to prevail, would the Dominion Parliament be competent to pass it, since such a law would interfere prejudicially with the revenue derived from licences granted under the authority of the Provincial Legislature for the sale or the carrying of arms. Their Lordships think that the right construction of the enactments does not lead to any such inconvenient consequence. It appears to them that legislation of the kind referred to, though it might interfere with the sale or use of an article included in a licence granted under sub-section 9, is not in itself legislation upon or within the subject of that sub-section, and consequently is not by reason of it taken out of the general power of the Parliament of the Dominion. It is to be

observed that the express provision of the Act in question that no licences shall avail to render legal any act done in violation of it, is only the expression, inserted probably from abundant caution, of what would be necessarily implied from the legislation itself, assuming it to be valid.

Next, their Lordships cannot think that the Temperance Act in question properly belongs to the class of subjects "property and civil rights." It has in its legal aspect an obvious and close similarity to laws which place restrictions on the sale or custody of poisonous drugs or of dangerously explosive substances. These things, as well as intoxicating liquors, can, of course, be held as property, but a law placing restrictions on their sale, custody or removal, on the ground that the free sale or use of them is dangerous to public safety, and making it a criminal offence punishable by fine or imprisonment to violate these restrictions, cannot properly be deemed a law in relation to property in the sense in which those words are used in the 92nd section. What Parliament is dealing with in legislation of this kind is not a matter in relation to property and its rights, but one relating to public order and safety. That is the primary matter dealt with, and though incidentally the free use of things in which men may have property is interfered with, that incidental interference does not alter the character of the law. Upon the same considerations, the Act in question cannot be regarded as legislation in relation to civil rights. In however large a sense these words are used, it could not have been intended to prevent the Parliament of Canada from declaring and enacting certain uses of property, and certain acts in relation to property, to be criminal and wrongful. Laws which make it a criminal offence for a man wilfully to set fire to his own house on the ground that such an act endangers the public safety, or to overwork his horse on the ground of cruelty to the animal, though affecting in some sense property and the right of a man to do as he pleases with his own, cannot properly be regarded as legislation in relation to property or to civil rights. Nor could a law which prohibited or restricted the sale or exposure of cattle having a contagious disease be so

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regarded. Laws of this nature designed for the promotion of public order, safety or morals, and which subject those who contravene them to criminal procedure and punishment, belong to the subject of public wrongs rather than to that of civil rights. They are of a nature which fall within the general authority of Parliament to make laws for the order and good government of Canada, and have direct relation to criminal law, which is one of the enumerated classes of subjects assigned exclusively to the Parliament of Canada. It was said in the course of the judgment of this Board in the case of the *Citizens' Insurance Company of Canada v. Parsons* (2), that the two sections (91 and 92) must be read together, and the language of one interpreted, and, where necessary, modified by that of the other. Few, if any, laws could be made by Parliament for the peace, order and good government of Canada which did not in some incidental way affect property and civil rights; and it could not have been intended, when assuring to the provinces exclusive legislative authority on the subjects of property and civil rights, to exclude the Parliament from the exercise of this general power whenever any such incidental interference would result from it. The true nature and character of the legislation in the particular instance under discussion must always be determined, in order to ascertain the class of subject to which it really belongs. In the present case it appears to their Lordships, for the reasons already given, that the matter of the Act in question does not properly belong to the class of subjects "Property and Civil Rights" within the meaning of sub-section 13.

It was argued by Mr. Benjamin that if the Act related to criminal law, it was provincial criminal law, and he referred to sub-section 15 of section 92, namely, "The imposition of any punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section." No doubt this argument would be well founded if the principal matter of the Act could be brought within any of these classes of subjects; but as far as they have

yet gone, their Lordships fail to see that this has been done.

It was lastly contended that the Act fell within sub-section 16 of section 92,—“Generally all matters of a merely local or personal nature in the province.”

It was not, of course, contended for the appellant that the Legislature of New Brunswick could have passed the Act in question, which embraces in its enactments all the provinces; nor was it denied, with respect to this last contention, that the Parliament of Canada might have passed an Act of the nature of that under discussion to take effect at the same time throughout the whole Dominion. Their Lordships understand the contention to be that, at least in the absence of a general law of the Parliament of Canada, the provinces might have passed a local law of a like kind, each for its own province, and that, as the prohibitory and penal parts of the Act in question were to come into force in those counties and cities only in which it was adopted in the manner prescribed, or, as it was said, “by local option,” the legislation was in effect, and on its face, upon a matter of a merely local nature. The judgment of Chief Justice Allen, delivered in the Supreme Court of the Province of New Brunswick in the case of *Barker v. The City of Fredericton* (5), which was adverse to the validity of the Act in question, appears to have been founded upon this view of its enactments. The learned Chief Justice says:—“Had this Act prohibited the sale of liquor, instead of merely restricting and regulating it, I should have had no doubt about the power of the Parliament to pass such an Act: but I think an Act, which in effect authorises the inhabitants of each town or parish to regulate the sale of liquor, and to direct for whom, for what purposes and under what conditions spirituous liquors may be sold therein, deals with matters of a merely local nature, which, by the terms of the 16th sub-section of section 92 of the British North America Act, are within the exclusive control of the local legislature.”

Their Lordships cannot concur in this view. The declared object of Parliament in passing the Act is that there should be uniform legislation in all the provinces

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respecting the traffic in intoxicating liquors, with a view to promote temperance in the Dominion. Parliament does not treat the promotion of temperance as desirable in one province more than in another, but as desirable everywhere throughout the Dominion. The Act as soon as it was passed became a law for the whole Dominion, and the enactments of the first part, relating to the machinery for bringing the second part into force, took effect and might be put in motion at once and everywhere within it. It is true that the prohibitory and penal parts of the Act are only to come into force in any county or city upon the adoption of a petition to that effect by a majority of electors, but this conditional application of these parts of the Act does not convert the Act itself into legislation in relation to a merely local matter. The objects and scope of the legislation are still general, namely, to promote temperance by means of a uniform law throughout the Dominion.

The manner of bringing the prohibitions and penalties of the Act into force, which Parliament has thought fit to adopt, does not alter its general and uniform character. Parliament deals with the subject as one of general concern to the Dominion, upon which uniformity of legislation is desirable, and the Parliament alone can so deal with it. There is no ground or pretence for saying that the evil or vice struck at by the Act in question is local or exists only in one province, and that Parliament, under colour of general legislation, is dealing with a provincial matter only. It is therefore unnecessary to discuss the considerations which a state of circumstances of this kind might present. The present legislation is clearly meant to apply a remedy to an evil which is assumed to exist throughout the Dominion, and the local option, as it is called, no more localises the subject and scope of the Act than a provision in an Act for the prevention of contagious diseases in cattle that a public officer should proclaim in what districts it should come into effect, would make the statute itself a mere local law for each of these districts. In statutes of this kind the legislation is general, and the provision for the special application of it to particular places does not alter its character.

Their Lordships having come to the conclusion that the Act in question does not fall within any of the classes of subjects assigned exclusively to the Provincial Legislatures, it becomes unnecessary to discuss the further question whether its provisions also fall within any of the classes of subjects enumerated in section 91. In abstaining from this discussion, they must not be understood as intimating any dissent from the opinion of the Chief Justice of the Supreme Court of Canada and the other Judges, who held that the Act, as a general regulation of the traffic in intoxicating liquors throughout the Dominion, fell within the class of subject "the Regulation of Trade and Commerce" enumerated in that section, and was, on that ground, a valid exercise of the legislative power of the Parliament of Canada.

In the result, their Lordships will humbly recommend Her Majesty to affirm the judgment of the Supreme Court of Canada, and with costs.

Solicitors—Linklater, Hackwood, Addison & Brown, for appellant; Simpson, Hammond & Co., for respondent.

1882. { THOMAS HARRIS AND GEORGE
July 4. { LANGSFORD CLAY (*appellants*)
v. JOHN PERKINS AND THE REV.
RICHARD WILLIAM ENRIGHT
(*respondents*).

Ecclesiastical Law—Public Worship Act, 1874—Suit by Churchwarden—Change of Churchwarden—Substitution of New Churchwarden—Practice—Churchwarden—Representation by.

A proceeding under the Public Worship Act, 1874, is not a criminal suit within the meaning of the Church Discipline Act.

A suit under the Public Worship Act, 1874, does not abate by reason of the churchwarden who instituted the suit having ceased to be churchwarden, and the Judge of the Arches Court has no power to substi-

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tute a succeeding churchwarden in the place of one who has instituted a suit.

This was an appeal from an order of the Judge of the Arches Court of Canterbury, dismissing an application by the appellants that their names might be instituted in the suit of *Perkins v. Enraght* in the place of Perkins, and that the conduct of the suit might be given to them, on the ground that the said Perkins had ceased to be churchwarden of the church of Holy Trinity, Bordesley, or a parishioner of that parish.

The appellants were churchwardens of Holy Trinity, Bordesley, in the county of Warwick and diocese of Worcester, and the respondent John Perkins was formerly churchwarden of Holy Trinity, Bordesley, aforesaid, and the Rev. Richard William Enraght was incumbent of Holy Trinity, Bordesley, aforesaid.

The facts were as follows: On the 10th of April, 1879, the respondent, John Perkins, being a churchwarden of the parish of Holy Trinity, Bordesley, sent a representation to the Bishop of Worcester concerning the Rev. Richard William Enraght, the incumbent of that parish.

The representation alleged that the said Richard William Enraght, at the services in his church, on certain days therein specified, committed various offences under the Acts of Uniformity and the Public Worship Regulation Act, 1874.

The Bishop of Worcester transmitted the representation to the Archbishop of Canterbury, and the Archbishop, by requisition to the Dean of the Arches Court, required him to hear and determine the matter of the representation.

The matters in question came on for hearing, and on the 9th of August, 1879, the learned Judge pronounced judgment, and declared that Richard William Enraght had committed the offences charged against him in the representation, and ordered that a monition should issue.

On the 28th of August, 1879, a monition was issued in accordance with the terms of this judgment.

On the 9th of March, 1880, an inhibition was issued, ordering that the said Richard William Enraght be inhibited for the term of three months, and, until the same should

have been relaxed, from performing any service of the Church.

On the 29th of March, 1880, the appellant George Langsford Clay was elected churchwarden of the parish of Holy Trinity, Bordesley, in the place of the respondent John Perkins, and on the same day the appellant Thomas Harris was appointed churchwarden of the said parish by the incumbent.

On the 20th of November, 1880, Lord Penzance pronounced the said Richard William Enraght guilty of contumacy and contempt of the law and jurisdiction ecclesiastical in not obeying his lawful commands contained in the inhibition, and ordered that his contempt should be signified under the statute 53 Geo. 3. c. 127.

On the 26th of November, 1880, a *significavit* in accordance with this order was issued.

The respondent John Perkins had ceased to reside in the parish of Holy Trinity, Bordesley.

On the 16th of November, 1881, the appellants moved the Court of Arches for an order that their names, or the name of the appellant George Langsford Clay alone, might be substituted in the future conduct of the suit, and that the appellant George Langsford Clay alone, or the appellants, might intervene in the suit, on the ground that the respondent John Perkins was not a churchwarden of the church.

The motion was heard by Lord Penzance, and judgment was given and an order made by him rejecting the application of the appellants and condemning them in costs.

From this judgment the present appeal was brought.

Cyril Dodd, for the appellants.—The respondent Perkins' authority to make a representation under the Public Worship Regulation Act, 1874, arose from his being elected churchwarden by the parishioners, and thus being their representative. This authority has been withdrawn from him, and he no longer possesses any authority or interest with regard to this representation. The object of the Public Worship Regulation Act, 1874, was to enable parishioners and their representatives, if they thought fit, to enforce a strict conformity to the law. A

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person who is not one of the parishioners, or a representative of the parishioners, has no jurisdiction or duty, ecclesiastical or otherwise, in the parish. The representation under the Public Worship Regulation Act, 1874, is not a criminal suit, the object of representations under that Act being the protection of aggrieved parishioners. He referred to *Prideaux on Churchwardens*, p. 47, *Liddell v. Beal* (1), *Lee v. Fagg* (2), *Emden v. Carte* (3), *White v. Bowron* (4), *Elphinstone v. Purchas* (5), *Clement v. Rhodes* (6), *Dalrymple v. Dalrymple* (7), *Oughton's Ordo Judiciorum*, tit. 14, p. 28, and *Tristram's Contentions Probate Practice*, p. 115.

Wills, Q.C., and *Jeune*, for the respondents.—This motion is not sanctioned by any of the provisions of the Public Worship Regulation Act, 1874, or by the rules and orders made thereunder, nor is it in accordance with the general practice of the Court of Arches. The promoter was not disqualified from continuing the proceedings by reason of his ceasing to be churchwarden. The appellants have no legal right to intervene in the proceedings. If the matter be in the discretion of the Court, the appellants ought not, in the circumstances of the case, to be substituted as promoters.

SIR BARNES PEACOCK delivered the judgment of their Lordships (8):—

This is an appeal from a judgment of the Arches Court of Canterbury, delivered by the Right Honourable James Plaisted Baron Penzance, sitting as official principal of that Court, upon a motion made in a proceeding commenced by representation against the respondent Richard William

(1) 14 Moore P.C. 1.

(2) 43 Law J. Rep. P.C. 78; Law Rep. 6 P.C. 38.

(3) 50 Law J. Rep. Chanc. 492; Law Rep. 17 Ch. D. 173.

(4) 43 Law J. Rep. Ecc. 7; Law Rep. 4 Ad. & Ec. 207.

(5) 39 Law J. Rep. P.C. 124; Law Rep. 3 P.C. 245.

(6) Add. Ec. Rep. 40.

(7) 2 Hagg. 137.

(8) Lord Bramwell, Sir Barnes Peacock, Sir Robert P. Collier, Sir Henry S. Keating and Sir John Mellor. Assessors—The Bishop of London, the Bishop of Durham and the Bishop of Liverpool.

Enraght, who is incumbent or vicar of Holy Trinity, Bordesley, in the county of Warwick, within the diocese of Worcester. The representation was made to the Bishop of Worcester under the provisions of section 8 of the Public Worship Regulation Act of 1874, by John Perkins, who was then the parishioners' churchwarden of Holy Trinity; and it is thus summarised in the words of the appellant's case:—"It stated in effect that the said Richard William Enraght used certain unlawful ecclesiastical vestments in, and introduced certain unlawful ritual practices into, and made certain unlawful ceremonious gestures during divine service on several occasions in public worship at the parish church of Holy Trinity aforesaid; and, further, as the 9th head of the representation, that he caused to be sung the hymn, 'O Lamb of God, which takest away the sins of the world,' during the administration of the Holy Communion at that church. The representation also stated as its 14th head that the said Richard William Enraght had, without lawful authority, unlawfully set up and retained a metal cross on the communion table in a particular manner. This representation was made to the Bishop of Worcester, who transmitted it to the Archbishop of Canterbury, and the said Archbishop required Lord Penzance to hear it in accordance with the said Act. Lord Penzance accordingly heard it, and issued a monition to the said Richard William Enraght to give up the use of all or most of the vestments, practices and gestures of which complaint was made in the representation, and not to cause the said hymn, 'O Lamb of God, that takest away the sins of the world,' to be sung. Lord Penzance also ordered the removal of the said metal cross, but merely on the ground that it had been placed on the communion table without a faculty. The said Richard William Enraght did not then appear."

John Perkins was the parishioners' churchwarden at the time the practices complained of took place. He was, therefore, perfectly competent to institute the proceedings. He was re-elected parishioners' churchwarden, and was a churchwarden at the time when the monition was issued; but subsequently to that time he ceased to be churchwarden. Mr. Clay was then ap-

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pointed the parishioners' churchwarden, and Mr. Harris was appointed churchwarden by the incumbent. On the 16th of November, 1881, a motion was made before Lord Penzance, in pursuance of notice served upon the respondents, to the effect "that the said Thomas Harris and George Langsford Clay, or the said George Langsford Clay alone, might be substituted for the said John Perkins in the above suit or matter of representation; or that the future conduct thereof might be given to the said Thomas Harris and George Langsford Clay, or the said George Langsford Clay alone; or that the said Thomas Harris and George Langsford Clay might be permitted to intervene;" and for general relief. The motion was heard by Lord Penzance on the 16th of November, 1881. The said John Perkins appeared by counsel to oppose it. The said Richard William Enraght was served with notice of motion, and was called, but did not appear. Lord Penzance refused to grant the motion, and said:—"I am of opinion that this Court has no power to do what it is asked to do in either of the forms in which the application has been made. What may be the effect of Mr. Perkins, the person who made the representation in this suit, having ceased to be churchwarden, and having ceased to reside in the parish,—what effect that may have on the existing suit,—is a matter that I do not enquire into to-day." It is also unnecessary for their Lordships on the present occasion to enquire into that matter. All that they have to deal with is this: whether, upon the construction of the Public Worship Regulation Act of 1874, sections 8 and 9, the suit which was instituted abated in consequence of Mr. Perkins ceasing to be churchwarden and parishioner, and whether the new churchwardens, or either of them, had a right to be substituted or to take out of Mr. Perkins's hands the conduct of the proceedings in the suit, or to intervene in the suit.

That question depends upon the construction of 37 & 38 Vict. c. 85; and their Lordships think that it is not important to consider whether the proceeding was a civil or a criminal suit under the old law of the ecclesiastical Courts. Section 4, which was cited in the course of the ar-

gument, says:—"Proceedings taken under this Act shall not be deemed to be such proceedings as are mentioned in the Act of the 3rd & 4th year of the reign of Her Majesty, chapter 86, section 23." That section is to this effect: that no criminal suit or proceeding against a clerk in holy orders of the United Church of England and Ireland for any offence against the law ecclesiastical shall be instituted in any ecclesiastical Court otherwise than as hereinbefore enacted or provided. In other words, proceedings under the Public Worship Regulation Act, 1874, are not to be deemed to be a criminal suit within the meaning of the Church Discipline Act, and may be instituted in the manner directed by the Public Worship Regulation Act. Their Lordships are of opinion that the object of the Public Worship Regulation Act, 1874, was not so much to carry out the wishes of all or even a large majority of the parishioners, as to give an easy mode of compelling obedience to the law. By section 8 it was enacted:—"If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners of the parish within which archdeaconry or parish any church or burial ground is situate, or for the use of any part of which any burial ground is legally provided, or in case of cathedral or collegiate churches any three inhabitants of the diocese, being male persons of full age, who have signed and transmitted to the Bishop under their hands the declaration contained in schedule A under this Act, and who have, and for one year next before taking any proceedings under this Act have had, their usual place of abode in the diocese within which the cathedral or collegiate church is situated, shall be of opinion" that any of those acts which are set out in the Act have been committed, "such archdeacon, churchwarden, parishioners, or such inhabitants of the diocese, may, if he or they think fit, represent the same to the Bishop" by sending the Bishop a representation in the form contained in the schedule.

There are three classes of persons who are authorised to send a representation: the archdeacon; a single churchwarden—not the churchwardens as a corporation, but a single churchwarden; or three

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parishioners, and if they have been inhabitants of the parish during the time these practices have been going on, they, or either of them, have a right to make a representation to the Bishop. In this case the representation was made by the parishioners' churchwarden, and he had a right at the time when he instituted the proceedings to take those proceedings. If three parishioners had thought fit they might have done so, or the archdeacon, if in an archdeaconry, might have done so: but neither of these parties were bound to do it unless they pleased.

Section 9 gives power to the Bishop to refuse to entertain the representation if he thinks it is one which ought not to have been made. "Unless the Bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken on the representation (in which case he shall state in writing the reason for his opinion, and such statement shall be deposited in the registry of the diocese, and a copy thereof shall forthwith be transmitted to the person or some one of the persons who shall have made the representation, and to the person complained of), he shall, within twenty-one days after receiving the representation, transmit a copy thereof to the person complained of, and shall require such person, and also the person making the representation, to state in writing, within twenty-one days, whether they are willing to submit to the directions of the Bishop touching the matter of the said representation, without appeal; and if they shall state their willingness to submit to the directions of the Bishop without appeal, the Bishop shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition (if any) as he may think proper; and no appeal shall lie from such judgment or monition." Then if the person making the representation and the person complained of shall not agree to submit to be bound by the decision of the Bishop, the representation is to be sent to the Archbishop, who shall order the Judge to proceed to hear the matter. Then, "The Judge, before proceeding to give the notice required by the Act, shall re-

quire from the person making the representation such security for costs as the Judge may think proper, such security to be given in the manner prescribed by the Rules and Orders." It is said that in the present case no such security for costs was given, but at any rate their Lordships may consider the case as if such security had been given.

The cases which have been cited with regard to a suit abating by death are not applicable to the present case. There is nothing in the Act to the effect that if a churchwarden who makes the representation ceases to be a churchwarden, or if he ceases to be a parishioner, he shall not go on with the suit; and it would be most inconvenient if the case were otherwise. Suppose proceedings are instituted by the parishioners' churchwarden, and he ceases to be the churchwarden, can the incumbent's churchwarden come in and ask to be substituted? Or suppose the succeeding churchwardens do not think that what the clergyman did was unlawful, or are persons who would not, if they had been churchwardens, have made the representation; are they to be substituted, and to be at liberty to refuse to carry on the proceedings? If so, for the year during which they remain churchwardens, the suit might be allowed to cease or drop, and in the succeeding year the next churchwardens would have a right to come in and say, Let us be substituted; your term of office has ceased, and we wish to carry on the proceedings. It would be most inconvenient if proceedings instituted at the pleasure of any of the persons authorised by the Act to make a representation to the Bishop should abate by reason of their ceasing to hold office, or to be parishioners, during the period covered by the suit.

Under these circumstances, their Lordships, agreeing with Lord Penzance that it is unnecessary to say what the effect of Mr. Perkins ceasing to be churchwarden or ceasing to be a parishioner may have upon the suit, are of opinion that no power is given by the Act to substitute succeeding churchwardens for a churchwarden who has instituted a suit for acts committed during the time he was churchwarden; and that the succeeding churchwardens, in the present case, had no in-

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terest in the matter which entitled them to intervene in the suit.

Under these circumstances their Lordships will humbly advise Her Majesty that the decision of Lord Penzance be affirmed, and that the appellant do pay the costs of this appeal.

Solicitors—Robinson, Preston & Stow, agents for Jacob Rowlands, Birmingham, for appellants; Tebbs & Sons, for respondents.

1882. { JOHN MARTIN (*appellant*) v.
Feb. 22. { THE REV. ALEXANDER HERIOT
MACKONOCHE (*respondent*).

Ecclesiastical Law—Arches Court—Judge, Discretion of—Conviction—Sentence—Practice.

The Judge of an Ecclesiastical Court has no discretion, while finding a defendant guilty of an ecclesiastical offence, to absolve him from all ecclesiastical censure or punishment for such offence.

In a suit instituted against the respondent, under the Church Discipline Act, the Judge of the Arches Court found the contents of the articles proved, and condemned the respondent in costs, but refused to decree any punishment. On appeal, their Lordships remitted the cause to the Arches Court, to decree such punishment as that Court should deem just.

This was an appeal from a decree of the official principal of the Arches Court of Canterbury in a cause of the office of the Judge promoted by John Martin, the present appellant, against the Rev. Alexander Heriot Mackonochie, a clerk in holy orders, the incumbent of the parish of St. Alban's, Holborn.

The cause came before the Arches Court of Canterbury, by letters of request from the Bishop of London, in accordance with the provisions of "An Act for better enforcing Church Discipline."

On the 20th of January, 1880, the citation issued, and was served on the respondent. The respondent did not appear.

For every offence charged in the suit

the respondent had been condemned before by an Ecclesiastical Court, and had been monished to abstain by an Ecclesiastical Court; and he had twice been punished for contumacy by the Judicial Committee of the Privy Council, on the first occasion by payment of costs, and on the second occasion by suspension.

The articles concluded with a prayer for the deprivation of the respondent from his benefice.

On the 5th of June, 1880, the Judge of the Court of Arches decreed that the promoter had proved the contents of the articles, but refused to decree that the respondent be deprived of his ecclesiastical preferment, or that he be otherwise duly and canonically punished, but did condemn him in costs.

From this judgment the appeal was brought.

Dr. Deane, Q.C., Jeune and G. T. Moore, for the appellant.—The decree of the Judge of the Arches Court ought to be varied in so far as the Judge did not pronounce that the respondent had offended against the laws ecclesiastical and did not decree that the respondent should be deprived of his ecclesiastical benefice. The respondent has offended against the laws ecclesiastical in the particular matters in the articles given in, admitted and proved in the cause. The respondent has, in a properly instituted suit, been proved to be guilty of many and repeated violations of the laws ecclesiastical, aggravated by wilful and persistent contempt of the decrees of the Ecclesiastical Courts. The punishment of deprivation is legally and properly assignable to offences proved to have been committed by the respondent. They referred to *Caudry's Case* (1), *Combe v. De la Bere* (2), *Pullen v. Clever* (3), *Sanders v. Head* (4), *Hebbert v. Purchas* (5), and *Martin v. Mackonochie* (6).

The respondent did not appear.

(1) 5 Cop. 1.

(2) 6 P. D. 157.

(3) 1 Hagg. Ec. 353.

(4) 3 Curt. 565.

(5) 41 Law J. Rep. P.C. 33; Law Rep. 4 P.C. 501.

(6) 40 Law J. Rep. P.C. 47; Law Rep. 8 P.C. 419.

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The LORD CHANCELLOR (LORD SELBORNE) delivered the judgment of their Lordships (7).—The suit out of which this appeal rises was instituted under the Church Discipline Act (3 & 4 Vict. c. 86), by letters of request from the Lord Bishop of London to the Court of Arches, on the 6th of January, 1880. In it the respondent, a beneficed clergyman of the diocese of London, was charged with eight several unlawful acts, specified in the articles as having been committed on two distinct occasions in the performance of divine service in his church within the two years last preceding, all which acts had been previously determined to be illegal, either by the Court of Arches, or by Her Majesty in Council on appeal from that Court.

There had been two previous suits in the Court of Arches against the same defendant, both promoted by Mr. Martin, who is also the promoter of this suit. In the earlier of them, a sentence was pronounced by Sir Robert Phillimore, then Dean of Arches, on the 28th of March, 1868, by which the respondent was found to have offended against the ecclesiastical law in two out of four points then charged against him, and was admonished to abstain for the future from the like acts. On the two charges to which this sentence of Sir R. Phillimore did not extend, the promoter appealed to Her Majesty in Council, and Her Majesty in Council, by the advice of the Judicial Committee (23rd of December, 1868), amended the sentence, declaring the respondent to have offended against the law in those points also, and directing him to be admonished against the repetition, for the future, of those offences.

The respondent having disobeyed (on one point) the monition issued against him in that suit pursuant to the order of Her Majesty in Council, was, by an order of the Judicial Committee, dated the 4th of December, 1869, further admonished to abstain for the future from any such act

of disobedience; and on the 25th of November, 1870, their Lordships, finding him to have repeated the same offence, and also to have disobeyed the monition issued by Sir Robert Phillimore on another point (which had not been the subject of appeal), suspended him, *ab officio et beneficio*, for three months. That suspension expired on the 25th of February, 1871; and (for anything that appears in the present suit) the orders, both of Sir Robert Phillimore in 1868, and of Her Majesty in Council, may have been afterwards obeyed by the respondent, during the interval between February 1871 and November 1879. No further proceeding in that first suit was taken, either in the Court of Arches or before the Judicial Committee. Of the offences charged against the respondent in the present suit, the four first are acts of the same kind with those which had been in question in that suit.

The second suit was instituted by letters of request from the Bishop of London, on the 1st of June, 1874. The offences charged in it did not include any of those four which had been in question in the first, and which are also charged in the present suit. They included all the others now in question. By the decree made at the hearing by Sir Robert Phillimore, on the 7th of December, 1874, all those charges were declared to be established, and the respondent was suspended *ab officio* for six weeks, and was admonished to abstain from like practices for the future. On the 23rd of March, 1878, the present Judge of the Court of Arches declared that the respondent had disobeyed Sir Robert Phillimore's monition in certain particulars, and granted a further monition against him. On the 1st of June, 1878, he was suspended, *ab officio et beneficio*, for three years, for continued disobedience. That suspension was in force when the present suit was instituted. It is alleged, by the articles in the present suit, that the respondent, nevertheless, did not desist from officiating in his church; and that, of the offences now charged, some were committed on the day on which that decree of suspension was published, and others on the Sunday afterwards. No proceeding was taken by the

(7) The Lord President, the Lord Chancellor, the Archbishop of York, Lord Blackburn, Lord Watson, Sir Barnes Peacock, Sir Robert Collier and Sir James Hannen. Ecclesiastical Assessors.—The Bishop of Durham, the Bishop of Winchester and the Bishop of Lichfield.

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appellant to put in force against the respondent, in either of the former suits, the penalties for contumacy and contempt provided, in lieu of excommunication, by 53 Geo. 3. c. 127.

The present suit prayed for a sentence of deprivation, or other canonical punishment, against the respondent. At the hearing before Lord Penzance, on the 5th of June, 1880, his Lordship pronounced a decree by which he found all the contents of the articles sufficiently proved, except three which had been abandoned, and condemned the respondent in costs; but he at the same time "refused" the prayer that the respondent should be deprived of his ecclesiastical promotions within the province of Canterbury, or might be otherwise duly and canonically punished.

The reasons for this judgment stated by his Lordship were, that in the second of the two former suits the promotor had taken no step to enforce the orders made by the Court; and after obtaining from the Court a decree sufficient to put a stop to the practices of which he complained, had abandoned it, and asked for a fresh remedy; that the Court had a "discretion in the passing of all such sentences," and that it would not be consistent with the due maintenance of its authority to pass a sentence of correction, and, while that sentence was still subsisting, to pass a second sentence "directed to the same end, without any allusion to the first, or any attempt to punish its non-observance."

It may be observed that the learned Judge did not, in giving these reasons, expressly refer to any charges, except those as to which orders had been made in the second suit. But his Lordship may probably have considered the same principle to be applicable to the other charges also; as practices similar to those alleged in them had been the subject of monitions in the first suit.

From this judgment, and from the reasons assigned for it, their Lordships find themselves compelled to dissent. They do not think that it can have been the intention of the learned Judge to affirm the existence, generally, of a discretion in an Ecclesiastical Court to refuse by decree to pass any sentence of canonical censure or punishment upon a clerk in holy orders

found by the same decree (in a suit duly instituted and prosecuted) to have been guilty of offences against the law, properly charged.

It is, no doubt, within the discretion of the Judge (whether subject or not to appeal) to inflict a censure or punishment, more or less lenient or severe, according to his judgment of all the circumstances of the case. But their Lordships think that the Judge has no discretion, while finding the defendant guilty of ecclesiastical offences, to absolve him from all ecclesiastical censure or punishment for those offences.

If the promotor in the present suit had been any other person than Mr. Martin (who was also the promotor in the former suits), their Lordships cannot doubt that the learned Dean of Arches would have acted on this view of his duty. The offences charged in this suit are all new and substantive offences against the law ecclesiastical, not coming within the principle "*memo debet bis vezari pro eadem causa.*" That principle would have been applicable if these acts had been the identical acts which had been adjudicated upon and punished in the former suits, or in either of them; but it is not applicable merely because they are repeated offences of the same description with those so adjudicated upon and punished. It may be that each of those acts might have been treated in a proceeding for contempt in one or other of the former suits as an instance of such contempt; and might in that way have been visited with any punishment due to persons disobeying orders of the Court. The judgment of the House of Lords in *Mackonochie v. Lord Penzance* (8) has conclusively settled that it is not an excess of ecclesiastical jurisdiction so to treat acts contrary to monitions of the Court, although they may also be substantive offences against ecclesiastical law; and that for this purpose a new suit under the Church Discipline Act is not necessary. It may also be that it would not be proper to institute a second suit for the mere purpose of punishing contumacy or disobedience as such. That question is not now before their Lord-

(8) 50 Law J. Rep. Q.B. 611; Law Rep. 6 App. Cas. 424.

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ships; but assuming that to be the law it can have no application when the new suit is for new and substantive offences.

The disobedience of the respondent to the previous orders is now before the Court (having regard to the abandonment of certain articles), not as a substantive offence but only as matter of aggravation; in which point of view the case of *Pullen v. Clewer* (3) seems to shew that it may be not immaterial.

Contempt or contumacy in another suit cannot deprive the Bishop, or a promoter who satisfies the Bishop that there is reason for proceeding in respect of new offences by a new suit, of the remedies given by the Church Discipline Act. If the promoter were a different person the offender could not plead, by way of defence, his own contempt in a former suit, or the unwillingness of the promoter in that suit to imprison him for it. When the promoter is the same person the new suit is not his only, but is also (in more than a merely formal sense) that of the Bishop, whose consent was necessary to its institution. Unless it can be shewn that either the Bishop or the promoter is open to some personal exception recognised by law, because he has not thought proper to enforce the penalties of contempt in a former suit, or that the whole objects of the new suit are substantially comprehended and necessarily attainable by means of proper proceedings in the former suit, their Lordships think that the identity of the promoter in both suits ought to make no difference, so far as concerns the question now under appeal. At the most it is one of those circumstances which it may be open to the learned Judge to consider when determining what censure or punishment to inflict.

Their Lordships do not find that any obligation is cast by law upon the promoter of a suit in an Ecclesiastical Court to take proceedings for the imprisonment of a party guilty of contempt. In the present case, it appears to them to be by no means impossible (consistently with what was determined by the House of Lords in *Mackonochie v. Lord Penzance*) (7) that an application to the Court of Arches or to the Judicial Committee to

make a declaration of contumacy, and issue a *significavit* against the respondent, grounded on the monitions of 1868 and 1869, might have been unsuccessful; the acts which are the subject of the four first charges in the present suit having taken place nearly ten years after the latest of those monitions. Whether this be so or not, the sentence of deprivation, which is asked for in the present suit, seems clearly to be one which, in a proper case, might be pronounced at the hearing of such a suit (following *Pullen v. Clewer* (3), p. 353); and it does not appear that there is any precedent for the infliction of that penalty for mere contumacy or contempt. In *Hebbert v. Purchas* (4) such precedents were searched for in vain; and Lord Hatherley, delivering the judgment of the Judicial Committee, said, "Without pausing to enquire whether by any substantive proceeding, founded on the ecclesiastical offence of disobedience to the Order in Council that has been already pronounced, a sentence of deprivation or amotion might have been obtained, we are of opinion that we cannot proceed to enforce compliance with the order which has been disobeyed by any summary process of contempt, through the medium of amotion."

It is further to be observed that, besides deprivation, there are other canonical punishments (degradation and excommunication) which might be inflicted in a proper case by an order having the force of a definitive sentence, but which could not lawfully be inflicted for mere contumacy or contempt.

It remains to be considered what order their Lordships ought now to advise Her Majesty to make. They have been asked to retain the suit, and to advise Her Majesty to pronounce against the respondent an immediate sentence of deprivation. But it was for the learned Judge in the Court below to determine what particular censure or punishment would be most proper under all the circumstances of this case, and to that question (for the reasons appearing in his judgment) the mind of the learned Judge was not addressed. Notwithstanding what is there said as to "a second sentence of suspension" being "out of the question," their Lordships can-

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not assume it to be impossible that such a sentence might be pronounced if the learned Judge thought it sufficient. If, on the case as it now stands, a more severe penalty should appear to him to be called for, he might still give the respondent (who has hitherto not thought fit to appear in this suit) one more opportunity of being heard against such a sentence, and of submitting himself to the Court and the law.

The decree under appeal, although not interlocutory in form, is not, in substance, a decision upon the question in the cause. Their Lordships think that it comes within the principle, stated by Lord Campbell when delivering the judgment in *Head v. Sanders* (9), that, "except under peculiar circumstances, a Court of Final Appeal ought not to decide any cause in the first instance, as it ought to have the benefit of the discussion and judgment in the Court below, and there ought not to be an original judgment pronounced from which there is no appeal."

Their Lordships will, therefore, humbly advise Her Majesty to reverse the sentence of the 5th of June, 1880, so far as relates to the matter complained of by this appeal; and to remit the cause to the Court below to decree against the respondent such lawful and canonical censure or punishment as to that Court shall seem just.

Proctors—Moore & Currey, for appellant.

1882. May 10. { THE CHINA MERCHANTS' STEAM
NAVIGATION COMPANY (ap-
pellants) v. WALTER LLOYD
BIGNOLD (respondent).
THE HOCHUNG. THE LAPWING.

Admiralty—Collision—Damages—Admiralty Orders, 36 & 37 Vict. c. 85. s. 17.

In a case of collision one ship was found to blame, and the other to have infringed the rules relating to lights; no

(9) 4 Moore P.C., 197.

evidence was offered on the part of the latter ship that the infringement of the rule could not have contributed to the collision:—Held, that the ordinary rule of the Admiralty applied, and that the damages should be apportioned between the two ships.

These were cross appeals from a judgment of the Acting Chief Justice of Her Majesty's Supreme Court for China and Japan, at Shanghai. The owners of the *Hochung*, on the 23rd day of May, 1881, instituted a suit against the commander of H.M.S. *Lapwing*, to recover damages caused by a collision which took place between the *Hochung* and H.M.S. *Lapwing*, on the 17th of April, 1881.

Leave was obtained to file a counter-claim, asking for relief, against the plaintiffs in the said suit in respect of damages suffered by the *Lapwing* in the same collision. The hearing of the suit and the counter-claim were taken together upon the same evidence by the learned Judge of the said Court, assisted by two assessors.

The circumstances of the case are set out in the judgment of their Lordships.

The Court found the *Hochung* to blame for the collision, and that the lights of the *Lapwing* were not duly exhibited as alleged on her behalf.

The learned Judge thereupon dismissed the petition on behalf of the owners of the *Hochung*, and also dismissed the petition on behalf of the *Lapwing*, and further ordered that each of the parties should respectively pay their own costs.

From these judgments the appeals were brought.

Butt, Q.C., Cohen, Q.C., and Masterman, for the *Hochung*, referred to *The Hibernia* (1), *The Fanny Carvill* (2), *The Voorwards* (3) and to *Marsden on Collisions*, p. 14.

Deane, Q.C., Staveley Hill, Q.C., and Stokes, for the *Lapwing*, referred to *The Ann* (4), *The East Lothian* (5), *The Has-*

(1) Aspinall M.C. N.S. vol. ii. 454.

(2) Aspinall M.C. N.S. 569; 44 Law J. Rep. P.C. 100.

(3) Law Rep. 5 App. Cas. 876.

(4) 1 Lush. Adm. 55.

(5) Ibid. 241.

China Merchants' Steam Navigation Co. v. Bignold.

well (6), *The Alice* (7) and *The North American* (8).

SIR ROBERT P. COLLIER delivered the judgment of their Lordships (9):—

This is a case of a collision between the *Hochung*, a steamer belonging to the China Merchants' Steam Navigation Company, and Her Majesty's Gunboat *Lapwing*, which happened on the 17th of April, 1881, about 10.30 p.m., twelve miles off Ocksen Island, on the coast of China. The weather seems to have been calm; there was very little wind. Cross suits have been instituted by the Steam Navigation Company and by the lieutenant of the *Lapwing*, who has been substituted for the commander who is unfortunately dead.

The cases of the two vessels may be very shortly stated. They were steering in almost opposite courses, so as to be nearly meeting vessels, there being but a point or a point and a half's difference between their courses. The *Lapwing* represents herself to have been steering S.W. by W. $\frac{1}{2}$ W.; the *Hochung*, N.E. by E. $\frac{1}{2}$ E. The case of the *Hochung* is in substance this: That she first saw, at a distance of two or three miles, the *Lapwing* as a dark object in the water, having no lights of any description, on her starboard bow, and that the *Lapwing* continued on her starboard bow; and that being so, the *Hochung*, supposing that the *Lapwing* was going to pass to starboard, starboarded her helm, and by that means turned to the northward; and that the collision occurred in consequence of the *Lapwing* porting her helm and thus meeting the *Hochung*.

The case of the *Lapwing* is, that the two vessels were nearly meeting each other, their courses being divergent by only a point or a point and a half, and that they were port bow to port bow; that the commander of the *Lapwing* kept his course for a considerable time, when he ported his helm in order to give the *Hochung* a

wider berth; that the *Hochung*, instead of continuing her course or porting (in either of which cases there would have been no collision), starboarded her helm, and thereby came right across his bows; and this caused the collision.

These are, in substance, the cases of the two vessels. There is also an allegation, on the part of the *Hochung*, that the *Lapwing* had no proper lights according to the regulations, and there is a denial of this on the part of the *Lapwing*. The learned Judge found both vessels to blame. He adopted the version of the *Lapwing* as to the relative position of the vessels, and as to the duty of each to steer her course under the circumstances, and he found that the *Hochung* was to blame in that respect. He also found the allegation that proper lights had not been exhibited by the *Lapwing* proved. He therefore found both vessels to be in fault. Their Lordships are sensible of the advantage which the Court below has of hearing and seeing the witnesses, and are not disposed to reverse decisions come to upon oral evidence unless there is very strong reason to suppose that the Court below has come to a wrong conclusion. Their Lordships see no reason to suppose that the Court has come to a wrong conclusion on either of the points which have been indicated.

With respect to the positions and courses of the vessels, their Lordships observe that not only is there a conflict between the witnesses called on behalf of the respective vessels, but that some of the witnesses who are called by the *Hochung*, who were on board the *Lapwing*, and who are disposed to give evidence in favour of the *Hochung*, corroborate the statements of the crew and officers of the *Lapwing* with respect to the courses of the two vessels. It is impossible for their Lordships, acting upon their general rules, to reverse a decision supported by such evidence.

With respect to the question of lights, it was admitted by an officer of the *Lapwing* that the principal light—the mast-head light of the *Lapwing*—had been hauled down some three or four minutes (it might have been more) before the collision, and was not hoisted up again at the time of the collision; and this is confirmatory of the statement of the captain

(6) Br. & Lush. 247.

(7) 38 Law J. Rep. Adm. 20; Law Rep. 2 P.C. 214.

(8) Sw. 358.

(9) Sir Robert J. Phillimore, Sir Barnes Peacock, Sir Robert P. Collier and Sir Arthur Hobhouse.

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and crew of the *Hochung* that no light was visible on board the *Lapwing*.

There is also some evidence (whether the learned Judge attached great importance to it or not does not distinctly appear) that her port side light was burning somewhat dimly, so that probably it could not be seen at so great a distance as it ought to have been, although unquestionably it was seen some time before the collision.

Their Lordships therefore think that the finding of the learned Judge upon the second point, namely, that the *Lapwing* failed to comply with the regulations with respect to exhibiting lights, was proved.

The question then arises, whether, this being so, the learned Judge was right in dismissing both suits; and it becomes necessary to refer to the law bearing upon this subject.

The 17 & 18 Vict. c. 104. s. 298, commonly called the Merchant Shipping Act, enacts as follows—"If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any rule for the exhibition of lights or the use of fog-signals, issued in pursuance of the powers hereinbefore contained, or of the foregoing rule as to the passing of steam and sailing ships, or of the foregoing rule as to a steamship keeping to that side of a narrow channel which lies on the starboard side, the owner of the ship by which such rule has been infringed shall not be entitled to recover any recompence whatever for any damage sustained by such ship in such collision, unless it is shewn to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary." This enactment for a certain time altered the rule of the Court of Admiralty, that where it appears that both parties in cross suits are to blame, the damage shall be apportioned between them. But the rule was restored by the 25 & 26 Vict. c. 63, which repealed the section last quoted, and enacted (section 29) that, "If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any regulation made by or in pursuance of

this Act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shewn to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary." In the absence therefore of any enactment to the effect that the plaintiff shall not be entitled to recover any recompence, the ordinary rule of the Admiralty became again applicable to cases of collision where both parties were to blame. A more recent statute, the 36 & 37 Vict., further enacts that—"If in any case of collision it is proved to the Court before which the case is tried, that any of the regulations for preventing collision contained in or made under the Merchant Shipping Acts, 1854 to 1873, has been infringed, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shewn to the satisfaction of the Court that the circumstances of the case made departure from the regulation necessary." This enactment renders it unnecessary for the plaintiff to prove that the collision was occasioned by the non-observance of the regulations; he proves default on the part of the defendant by merely shewing the regulations have been infringed.

This latter section has received interpretation from this Board in several cases. It may be enough to refer to the case of *The Hibernia* (1). In this case, decided on the terms of the last statute, it was held that a ship not exhibiting proper lights was in fault, even if the want of lights did not contribute to the collision. This case may be considered as having been qualified to a certain extent by a subsequent case—*The Fanny M. Carroll* (2)—in which this Board, affirming a decision of Sir Robert Phillimore, expressed itself in these terms: "There remain, however, two other possible constructions. The first is that on proof of an infringement of any of the regulations for preventing collisions, there arises, subject only to the qualification contained in the final clause of the section, an absolute presumption of culpability against the vessel guilty of such infringement, to which the Court is bound to give effect, whatever the nature of the infringement may be. The other is

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that the infringement must be one having some possible connection with the collision; or, in other words, that the presumption of culpability may be met by proof that the infringement could not by any possibility have contributed to the collision." And the same doctrine has been laid down by Sir Robert Phillimore in very much the same terms in a subsequent case of *The Englishman* (10).

Applying the law as thus laid down, it appears to their Lordships in this case, that at all events it has not been shewn that the non-compliance by the *Lapwing* with the regulations in respect to lights could not have contributed to the collision. On the contrary, they are inclined to think that, in all probability, it did materially contribute to the collision. That being so, the ordinary rule of the Admiralty Court applies as to the division of damage. It has been suggested by one of the learned counsel for the respondents that the learned Judge was right in dismissing both suits, or at all events in dismissing the suit of the *Hochung*, on the ground that the proof was not *secundum allegata et probata*; but it appears to their Lordships that there is a sufficient allegation on the part of the *Hochung* that the *Lapwing* infringed the regulations with respect to lights; and, putting aside all the rest of their allegations, that would entitle the owners of that vessel to recover upon the proof of the infringement of the regulation with respect to lights.

The allegations of the *Lapwing* of improper navigation by the *Hochung* are also sufficient, and established. That being so, the ordinary rule of the Court of Admiralty applies; and therefore it will be necessary that the judgment should be varied by directing that, instead of the two petitions being dismissed, the damages should be divided between the parties according to the Admiralty rule, which is that each party shall obtain from the other half of the damage which he has suffered.

Their Lordships will, therefore, advise Her Majesty to vary the judgment in the

manner which has been above intimated. There will be no costs on either side.

Solicitors—Harwood & Stephenson, for the *Hochung*; Stokes, Saunders & Stokes, for the *Lapwing*.

1882.
June 20.

THE RIGHT REV. NATHANIEL
JAMES MERRIMAN (THE
BISHOP OF GRAHAM'S TOWN)
(appellant) v. THE REV.
FREDERICK HENRY WILLIAMS
(respondent).

Cape of Good Hope—Church of South Africa—Status of—Bishop—Authority of.

The Church of South Africa was constituted by articles which provide that such Church receives the same doctrine, sacraments and discipline, and the same standards of faith and doctrine, as the Church of England: provided that, in the interpretation of the aforesaid standards of faith, such Church be not bound by decisions of faith or doctrine or discipline other than those of its own ecclesiastical tribunals:—Held, first, that this proviso disconnected the Church of South Africa from the Church of England; secondly, that a Bishop of the Church of South Africa has no jurisdiction in or over a church in that Colony conveyed to trustees for ecclesiastical purposes in connection with the Church of England.

This was an appeal from a judgment of the Supreme Court of the Cape of Good Hope, pronounced on the 26th of August, 1880, in an action in which the appellant was plaintiff and the respondent was defendant.

The action was brought by the appellant as Bishop of the Church of the province of South Africa, against the respondent who was one of the clergy of that Church, to enforce two sentences passed on the respondent by the Diocesan Court of Graham's Town on the 5th of August and 13th of November, 1879, respectively, by which the respondent was suspended from

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the office of priest and other spiritual dignity, with loss of all emoluments derived from any benefice or office held by him as dignitary or priest of the said Church, and for a declaration that the appellant should have free access to the Cathedral Church of Saint George in Graham's Town, and for a perpetual interdict to restrain the respondent from interfering with the rights of the appellant, and from performing any ecclesiastical functions or receiving any emoluments within the limits of the diocese of Graham's Town as a dignitary or priest of such church. The judgment of the Court was pronounced against the appellant.

From this judgment the appeal was brought.

The circumstances under which the suit arose are fully stated in the judgment.

Horace Davey, Q.C., Jeune and M. Mackenzie, for the appellant.—The Church of the province of South Africa was and is a Church in connection with the Church of England within the meaning of the grant of 1849 and the transfer of 1863. The performance of divine service by the appellant within the cathedral is a use of the cathedral for ecclesiastical purposes in connection with the Church of England within the meaning of the grant and transfer. The appellant is the successor of Bishop Cotterill, and is the Bishop of the Diocese of Graham's Town in the Church of the province of South Africa, and as such is entitled to the same rights in and over the cathedral as Bishop Cotterill had, and to exercise the same episcopal authority over the respondent as one of the clergy of the church and dean of the cathedral church. The Church of the province of South Africa, of which the appellant is one of the bishops, is the same Church as that of which Bishop Cotterill was a bishop. The land on which the cathedral church stands is legally vested in the trustees under the Diocesan Trust Board of the Diocese of Graham's Town, and the appellant was duly authorised by the trustees to perform divine service within the cathedral. The respondent had no rights in the cathedral church except by the permission of the trustees. The respondent was

bound by the constitution and regulations framed by the Provincial Synods.

They referred to *Long v. The Bishop of Cape Town* (1), *In re The Bishop of Natal* (2), *The Bishop of Cape Town v. The Bishop of Natal* (3) and *The Bishop of Natal v. Gladstone* (4).

Charles, Q.C., and *W. G. F. Phillimore*, for the respondent.—Neither the appellant nor the Provincial Synod of the Church of the province of South Africa had any right or control over the respondent in the performance of his duties in the Church of St. George. Neither the appellant nor the Provincial Synod had any rights to or in the site or building of the Church of St. George. The appellant is not Bishop of Graham's Town within the meaning of the letters patent constituting that see. The Church of St. George is held upon trust for the Church of England, and not for the Church of the province of South Africa. The transfers of 1863 and 1871 are invalid and inoperative. But even assuming them to be valid the appellant is not Bishop of Graham's Town within the meaning of the deed of transfer. The respondent held no office or emolument upon which the sentence of the Diocesan Court could operate.

They referred to *Williams v. The Bishop of Salisbury* (5), *Martin v. Mackonochie* (6), *Gorham v. The Bishop of Exeter* (7) and *McAllister v. The Bishop of Rochester* (8).

SIR ARTHUR HOBHOUSE delivered the judgment of their Lordships (9):—

In this case the plaintiff in the Court below and the appellant here is the Bishop of Graham's Town, one of the dioceses of the province of the Church of South Africa. The defendant in the Court below and the respondent here bears the title of Dean of Graham's Town; he is also the

(1) 1 Moore P.C. N.S. 411.

(2) 3 Moore P.C. N.S. 115.

(3) 6 Moore P.C. N.S. 203; 38 Law J. Rep. P.C. 58.

(4) 36 Law J. Rep. Chanc. 2; Law Rep. 3 Eq. 1.

(5) 2 Moore P.C. N.S. 376.

(6) 40 Law J. Rep. P.C. 47; Law Rep. 2 P.C. 365.

(7) Moore, Special Reports.

(8) 49 Law J. Rep. C.P. 114; Law Rep. 5 C.P. D. 194.

(9) Sir Barnes Peacock, Sir Robert Collier, Sir James Hannen, Sir Richard Couch and Sir Arthur Hobhouse.

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Colonial Chaplain appointed by the Crown for Graham's Town; and he is *de facto* the officiating minister, sometimes called the rector, of the church of St. George in Graham's Town. The controversy between the parties has raised a very important question, but its earlier phases are comparatively unimportant, and may be briefly stated.

In the year 1878 a difference of opinion arose respecting the right to preach in the church of St. George. The plaintiff claimed it as his cathedral, in which he had a right to preach whenever he thought fit. The defendant was willing to allow the plaintiff to preach whenever he thought fit as a matter of courtesy; but as to the matter of right, he held that he as dean had control over the arrangements. The plaintiff would not consent to preach except as a matter of right.

On the 17th of April, 1879, the plaintiff attended the church with the object of preaching, having previously admonished the defendant in a formal way not to hinder him; but the defendant anticipated the usual time for the delivery of the sermon, and began to preach himself, whereupon the plaintiff protested and left the church.

For this conduct the defendant was presented in the Diocesan Court of Graham's Town, and was there found guilty of contumacious disobedience, and of conduct giving just cause of offence or scandal to the church; and he was suspended from his ministerial functions for one calendar month, and further until he should engage not to repeat the offence of preventing the bishop from preaching or ministering in the church of St. George. As the defendant refused to obey that sentence, he was excommunicated by a subsequent decree of the same Court.

The present suit was instituted to enforce the sentences of the Diocesan Court. By his declaration, filed on the 21st of April, 1880, after shewing that he and the defendant are officers of the Church of the province of South Africa, the plaintiff prays relief in the following terms:—

"Wherefore the plaintiff says that an action has accrued to him, and he prays that this Honourable Court will by its judgment declare,—

"That the defendant is one of the clergy of the said Church within the true intent and meaning of Article XXIV. of the constitution thereof, and is bound by the laws of the said Church, and by the rules and regulations made by the said Diocesan Synod of Graham's Town, and by the said Provincial Synod, or either of them.

"That the defendant is bound to accept and immediately submit to any sentence depriving him of any or all of the rights and emoluments appertaining to the office of Dean and Rector of the cathedral church of Saint George, or to any other office or benefice held or enjoyed by him as dignitary or priest of the said church within the diocese of Graham's Town, such sentence having been passed upon him after due examination had by the Diocesan Court of Graham's Town, being a tribunal acknowledged by the Provincial Synod for the trial of a clergyman, saving all rights of appeal allowed by the said Provincial Synod.

"That under and by virtue of the sentences passed upon the defendant by the Diocesan Court of Graham's Town, on the 5th of August and the 13th of November, 1879, respectively, as aforesaid, the defendant is lawfully suspended from his office of priest and other spiritual promotion and dignity, with total loss of all emoluments derived from any benefice or attached to any office or offices heretofore held by him as dignitary or priest of the said church within the diocese of Graham's Town.

"That the plaintiff in his episcopal capacity has the right of officiating and performing all ecclesiastical functions within the said cathedral church.

"That the plaintiff, in his said capacity, shall have free and uninterrupted access to the land and premises comprised in the transfer bearing date the 17th of June, 1871, to the trustees under the Diocesan Trust Board of the Diocese of Graham's Town, of the site of the said cathedral church of Saint George, and to the said church or cathedral or other buildings erected thereon, for the purpose of enjoying and exercising all rights, privileges and immunities which have heretofore been enjoyed and exercised or ought to be enjoyed and exercised by the Bishop of Graham's Town as such bishop or otherwise, in

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reference to or within the cathedral thereon and its appurtenances, and that the defendant and his agents shall be restrained from in any manner interfering with such access, enjoyment or exercise.

"And the plaintiff further prays that this Honourable Court will grant a perpetual interdict restraining the defendant from hindering the plaintiff in his lawful ministrations within the Diocese of Graham's Town, and further restraining the defendant from officiating or performing any ecclesiastical functions whatsoever, and from receiving any emoluments in respect of the performance of any ecclesiastical functions whatsoever within the limits of the diocese of Graham's Town, as a dignitary or priest of the said church."

By his pleas the defendant claims to be rector of the church of St. George, and to perform ecclesiastical functions in that church as a priest of the Church of England as by law established. He says that the Church of the province of South Africa is a religious association entirely independent of the Church of England as by law established; that he himself is not a member of that Church, nor bound by its constitutions or canons; that the church of St. George is held in trust for ecclesiastical purposes in connection with the Church of England as by law established: and that the plaintiff and the Church of South Africa have no authority or jurisdiction over it.

On the 26th of August, 1880, the Supreme Court pronounced a decree absolving the defendant from the instance with costs against the plaintiff. The ground principally relied on by the Chief Justice, Sir Henry de Villiers, was that the church of St. George had been devoted to ecclesiastical purposes in connection with the Church of England, and that the Church of South Africa was not, so far as the circumstances of the colony would permit, a part of the Church of England. Mr. Justice Dwyer concurred, but he also thought, contrary to the opinion of the Chief Justice, that the defendant had not so acted as to give the plaintiff the episcopal jurisdiction claimed by him. Mr. Justice Smith expressed no opinion on the main question decided by the Chief Justice, doubting whether it could be properly raised in this suit; but he concurred in

the decree on the ground that the necessary parties for discussing that question were not before the Court.

Their Lordships have now to consider whether this decree is right. Before entering on the discussion they wish to say that in the careful and elaborate judgment of the Chief Justice, the case is treated with a gravity befitting its importance, and every topic in turn is handled with a fulness and clearness which are of the greatest assistance to those who have to review it.

They also wish to state their sense of the judicial method and impartiality which marks the proceedings of the Diocesan Court. An objection has been raised to those proceedings on the ground that the Court was improperly constituted, and Mr. Justice Dwyer was of that opinion; but in the view which their Lordships take of the case it is not necessary to express any opinion on that point.

Turning now to the plaintiff's prayer, it is clear, and it has not been disputed by his counsel at the bar, that the greater part of it asks relief which is beyond the competence of the Civil Court to grant in this suit.

The defendant is not receiving any emolument except as colonial chaplain, nor does he hold any benefice in the Church of South Africa, unless it may be the incumbency of the church of St. George. It is clear therefore that there is no question before the Civil Court except that which relates to the use of the church of St. George, and that the relief prayed must be confined to such an execution as under the circumstances may be proper of the trusts upon which the church of St. George is held.

In order to entitle himself to that amount of relief the plaintiff must shew—first, that he is a proper object of the trusts; and secondly, that both as between himself and the defendant, and as between himself and other objects of the trusts, he is entitled to have the defendant restrained from and himself admitted to the use of the church in question. The first thing then to be ascertained is the precise position of the property in dispute.

It is clear that the site had at some time been vested in the Crown. It does not appear by whom the church was built, but

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prior to the year 1839 its affairs were regulated by a committee called the Church Committee. It seems to have been the practice for the colonial chaplain appointed by the Crown to become the officiating minister of the church. It is not possible upon the materials in this record, and perhaps is not important, to ascertain more precisely the state of things prior to 1839.

On the 23rd of January, 1839, an Ordinance was passed by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly of that colony. It recites as follows:—

“Whereas it is expedient that the inhabitants of Graham's Town and the parochial limits thereof, being members of and holding communion with the United Church of England and Ireland as by law established, should be invested with the right and privilege of choosing and appointing, under certain regulations, a vestry and churchwardens for the better and more effectual administration and management of all matters connected with the church of Graham's Town, commonly called St. George's church, and that the said vestry and churchwardens after having been duly appointed should possess certain powers and perform certain duties as the same are usually possessed and exercised by such officers according to the customs and usages of the said United Church of England and Ireland. And whereas on the appointment of the said vestry and churchwardens it is expedient that the office of Church Committee as at present constituted should cease and determine.”

Provisions are then made for the election of a vestry and churchwardens by the male inhabitants of Graham's Town and of the parochial limits thereof, being members of and holding communion with the United Church of England and Ireland as by law established.

The officiating minister is to be chairman of the vestry, when present, and, by section 8, the vestry are to make rules for their own guidance, “and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as to them shall seem expedient. Provided that the rules contain nothing repugnant to law or to the

tenor of this Ordinance, or to the customs and usages of the United Church of England and Ireland as by law established.”

By section 10 the vestry are to have the same powers, rights and duties as were then possessed by the Church Committee.

Section 12 empowers the vestry to maintain suits in performance of the trusts reposed in them.

Section 14 provides for the keeping of accounts, which are to be audited and to be laid before the church members at a general annual meeting.

Section 15 provides for the election of churchwardens to exercise the usual functions of English churchwardens so far as applicable to the colony.

Section 19 enacts that there shall be set apart in the church pews and seats for the civil and military authorities, the minister, the officers of the garrison, and for troops and poor people.

Their Lordships consider the meaning and effect of this Ordinance to be reasonably clear. Whatever may have been the exact rights of the Crown and the inhabitants as between one another, the church was, at the date of the Ordinance, property used for religious purposes. It was desired to place the arrangements on a more public and permanent basis, and to have a governing body more responsible and efficient than the Church Committee. For that purpose the machinery of election is put in motion. The persons so elected are called a vestry and churchwardens in analogy to the English parochial system, but they are elected by the church members, not by the parishioners at large. The churchwardens receive powers analogous to those of English churchwardens. But over and above that, the vestry are clothed with duties and trusts, and made subject to liabilities, for the benefit partly of the church members and partly of the Government, such as appertain only to the trustees and managers of what we should in this country call a charitable endowment. It would be exceedingly difficult for the Crown to contend that the Ordinance did not effect a permanent dedication of the site to charitable uses. But that point need not be discussed, because such a dedication was undoubtedly effected by the next transaction.

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On the 7th of June, 1849, the Governor of the Colony, in the name and on behalf of Her Majesty, granted the site to Dr. Gray, the Bishop of Cape Town, and his successors in the see, "on condition that the land hereby granted shall for ever hereafter be used for ecclesiastical purposes in connection with the Church of England, and to and for no other purpose whatsoever. . . . Subject, however, to all such duties and regulations as are either already or shall in future be established with regard to such lands." The site is described as a piece of land on which the St. George's church has been erected.

It does not appear that any duties or regulations had been established except those which were established by the Ordinance of 1839, nor would there seem to be any mode of establishing any future duties or regulations except by some legislative or judicial authority.

With reference to the expression "ecclesiastical purposes in connection with the Church of England," it is to be observed that the Bishopric of Cape Town was founded in the year 1847, at which time, as is stated in the judgment in *Long v. The Bishop of Cape Town* (1), the legislative authority over the colony was vested in the Crown. Bishop Gray was appointed by Her Majesty, and ordained and consecrated by the Archbishop of Canterbury, having first taken the oath of allegiance, the oath affirming the Queen's supremacy, and the oath of obedience to the Archbishop as Metropolitan.

When the grant of 1849 was made the see of Cape Town included Graham's Town. But in the year 1853 Dr. Gray resigned his bishopric in order that his diocese might be contracted in extent, and that two new dioceses, those of Graham's Town and Natal, might be erected.

On the 8th of December, 1853, the Crown issued letters patent assigning to Bishop Gray the new diocese of Cape Town, and appointing him to be Metropolitan Bishop in the Colony of the Cape of Good Hope and its dependencies, and the Island of St. Helena.

On the 20th of December, 1853, the Crown issued letters patent erecting the Bishopric of Graham's Town, and ordering the consecration of Dr. Armstrong as

first bishop of that diocese. The bishop and his successors were made a body corporate. Graham's Town was erected into a city and the see of the bishop. And it was declared "that the church called St. George, in the said city of Graham's Town, shall henceforth be the cathedral church and see of the said John Armstrong and his successors bishops of Graham's Town." But the bishop was left at liberty to constitute any other church at Graham's Town to be his cathedral and see. The bishop had power granted to him to found dignities in his cathedral and archdeaconries in his diocese. By the bishop's successors were meant persons named and appointed by the Crown, and ordained and consecrated by the Archbishop of Canterbury.

Some time previously to the issuing of these letters patent the Crown had granted a constitution to the colony, and a representative Colonial Legislature had been established.

On the 20th of November, 1857, the Crown issued letters patent appointing the Rev. Henry Cotterill to be Bishop of Graham's Town in the place of Bishop Armstrong, who was then dead, and directing the Archbishop of Canterbury to consecrate him. The provisions of this instrument which relate to the church of St. George, to the power of the bishop to constitute dignitaries, and to the nature of the bishop's successors, are precisely to the same effect with the corresponding provisions in Bishop Armstrong's patent.

On the 17th of July, 1860, an Act of the Colonial Legislature was passed, enabling the Bishop of Cape Town to transfer to the Bishop of Graham's Town for the time being and his successors all immovable property vested in the Bishop of Cape Town but situate in the diocese of Graham's Town, "provided that every such property so transferred shall be subject to the same trusts in all respects after such transfer as it was subject to at the time of such transfer."

By a deed, dated the 4th of March, 1863, the Bishop of Cape Town conveyed to Bishop Cotterill and his successors the land conveyed by the grant of the 7th of June, 1849, subject to the conditions in that grant mentioned and referred to.

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By a deed, dated the 17th of June, 1871, Bishop Cotterill conveyed the same property to himself and three other persons, being apparently the trustees of the Diocesan Trust Board of Graham's Town, to hold upon the trusts upon which the bishop himself held.

There has been some controversy as to the regularity of this conveyance of 1871, but their Lordships hold the question to be immaterial. The interest which was passed first to Bishop Gray, then to Bishop Cotterill, and then to the grantees of 1871, is an interest clothed with no active duties, and subject to the trusts, duties and regulations created by the Ordinance of 1839 and the conveyance of the 7th of June, 1849. It was not contended at the bar that the possession of such a bare interest as this could affect the questions in this case.

Such being the legal position of the property in dispute, it is now necessary to shew the position of the disputants, both with reference to one another and with reference to the property.

In the month of February, 1863, Lord Kingsdown delivered the opinion of this Board in a case which threw a new light on the position of the Church of England in South Africa, and shewed that the advisers of the Crown had purported to do what was beyond its power. In the controversy between Bishop Gray of Cape Town and Mr. Long, the Colonial Court held that the letters patent of 1853, being issued after a constitutional government had been established, were ineffectual to create any jurisdiction, ecclesiastical or civil, within the colony. On appeal to Her Majesty in Council that opinion was upheld. Lord Kingsdown then proceeds to discuss the question whether the want of coercive jurisdiction in the bishop had been supplied by the voluntary submission of Mr. Long. He states the position of English Churchmen as follows:—

"The Church of England, in places where there is no Church established by law, is in the same situation with any other religious body—in no better, but in no worse position; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body, which will be

binding on those who expressly or by implication have assented to them.

"It may be further laid down that, where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and, if not, has proceeded in a manner consonant with the principles of justice.

"In such cases the tribunals so constituted are not in any sense Courts. They derive no authority from the Crown, they have no power of their own to enforce their sentences, they must apply for that purpose to the Courts established by law, and such Courts will give effect to their decision, as they give effect to the decisions of arbitrators whose jurisdiction rests entirely upon the agreement of the parties.

"These are the principles upon which the Courts in this country have always acted in the disputes which have arisen between members of the same religious body, not being members of the Church of England" (9).

In the course of the next year a controversy turning upon the same principles arose between the Bishop of Natal and Bishop Gray, claiming to act as his metropolitan under the patents of 1853. The opinion of this Board was delivered by Lord Westbury in December, 1864. As to the power of the Crown the law is thus laid down:—

"We apprehend it to be clear upon principle that after the establishment of an independent Legislature in the Settlements of the Cape of Good Hope and Natal, there was no power in the Crown by virtue of its prerogative (for these letters patent were not granted under the provisions of any statute) to establish a metropolitan see or province, or to create an ecclesiastical corporation whose status, rights and authority the colony could be required to recognise" (10).

(9) 1 Moore, P.C. 461.

(10) 3 Moore, P.C. 148.

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And, after giving reasons for this opinion, his Lordship continues: "The same reasoning is of course decisive of the question whether any jurisdiction was conferred by the letters patent. . . . It is quite clear that the Crown had no power to confer any jurisdiction or coercive authority upon the metropolitan over the suffragan bishops, or over any other person."

The question then arose whether the Bishop of Natal had by contract given the jurisdiction claimed by Bishop Gray. On this point Lord Westbury says: "Even if the parties intended to enter into any such agreement (of which, however, we find no trace), it was not legally competent to the Bishop of Natal to give, or to the Bishop of Cape Town to accept or exercise any such jurisdiction" (11).

One effect of these expositions of the law was that the Crown ceased to grant letters patent for bishops in colonies possessing independent Legislatures. It has been supposed in this case that the Crown might still take such action as to give to Graham's Town a bishop who should be a successor to Bishops Armstrong and Cotterill within the terms of the patent creating the bishopric. But though the Crown has not in any formal or public way decided not to resume the practice prevailing prior to 1863, their Lordships are clear that this case must be decided on the footing that the practice no longer exists.

Another effect of the decisions was that English Churchmen in the colonies took steps to organise themselves, like other independent religious societies, on the footing of contract. This was done in South Africa by the action of Synods, the effects of which will be presently discussed.

In the year 1865 the defendant, who was then the Vicar of Ashton-under Lyne, agreed with Bishop Cotterill, who was in England, that he should accept the office of Colonial Chaplain at Graham's Town, and should also be appointed Dean of Graham's Town. He was accordingly appointed to be colonial chaplain by letter from the Secretary of State, and he went to the colony in November, 1865. He had before leaving England signed declarations

(11) 3 Moore, P.C. 155.

of obedience to the Bishop of Graham's Town and his successors, and of submission to the rules and regulations of the Synod of the diocese of Graham's Town, in all things not contrary to the laws of the United Church of England and Ireland. And he also subscribed to the three articles required to be subscribed by the 36th of the Canons of 1603.

On his arrival in the colony he found that the vestry were in possession of the church of St. George, as, according to the Ordinance of 1839, they ought to have been. They appear to have accepted the colonial chaplain to be their officiating minister as a matter of course, according to the usual practice, and they put the defendant into possession of the church by handing him the keys, which are the symbols of possession. This, he says, was done under the Ordinance of 1839, by the provisions of which St. George's Church has always been governed. With a natural fondness for terms which bring the familiar system of the mother country before the mind, he calls this proceeding an induction of himself as rector.

Two or three months afterwards Bishop Cotterill returned to the colony, and he then appointed the defendant to be Dean of Graham's Town, and installed him in the church as such. So far as the dignity goes, the bishop may have had power under his patent to create it, but he could not confer any authority with it except such as might flow from contracts between the defendant and others. In this case there were no special statutes for the cathedral, nor have any been made till after the present dispute began.

It is important not to be misled by the false analogies of English ecclesiastical titles. The defendant is a titular dean, and may be called a rector. But in point of law, and for the present purpose, he must be taken as the officiating minister of a church governed by the Ordinance of 1839 and the grant of 1849, and appointed thereto either by the vestry, or by the Crown, or by the joint action of the two. Neither the vestry nor the Crown have been made parties to this suit. If it were necessary to determine the precise origin of the defendant's title, their Lordships would have to deal with the difficulty as

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to the frame of suit which has been indicated by the Chief Justice, and on which Mr. Justice Smith bases his judgment.

In the years 1867 and 1869 Synods were held for the diocese of Graham's Town. In the year 1870 was held the first Provincial Synod of the Church of South Africa. By these synods much was done to establish that Church on a voluntary basis. It is sufficient for the present to say of them that the defendant took an active and leading part in the proceedings.

In the year 1871 Bishop Cotterill resigned his office, and, as no appointment of a successor by letters patent could be looked for, Bishop Gray, as Metropolitan, issued a mandate addressed to the defendant commanding an election of a new bishop. The result was the election of the plaintiff, and in that election the defendant took the leading part.

Some time afterwards the defendant became dissatisfied with the proceedings of the Synod, but he did not withdraw from his position in the Church of South Africa. When the present dispute began the defendant did not contend that the plaintiff had not the ecclesiastical character which he claimed to have. On the contrary, the defendant insisted on his own rights as dean, which, as he asserted quite erroneously, would, according to English ecclesiastical law, give him the right of excluding the bishop from ministrations in the cathedral. It is only during this litigation that the defendant has contended either that he himself is not a member of the Church of South Africa, or that the plaintiff is not the successor of Bishop Cotterill, or that the plaintiff and his church are disconnected with the Church of England.

Their Lordships consider that the defendant's present contention is wholly inconsistent with his past conduct. The Chief Justice says on this point:—"It is idle for the defendant to deny that he joined the Church of South Africa and became personally subject to its constitutions and canons, in the face of the part which he took in the discussions of the Provincial Synod of 1870, and in the absence of any protest against the separatist canons adopted by that synod. It is still more idle for him to deny that he has

subjected himself personally to the episcopal jurisdiction of the plaintiff according to the laws of the Church of South Africa, in the face of the documentary proof which exists of his active participation in the election of the plaintiff." Of the same opinion was Mr. Justice Smith, and with it their Lordships entirely agree.

So far then as this dispute turns on the question whether the defendant has come under personal contracts or equities the plaintiff has proved his case. But the defendant cannot contract away the rights of other people. If he is occupying an office in which he owes duties to the government, to the vestry, or to the church members, he cannot by his contract give to any extraneous person or body rights which may interfere with those duties. If again the plaintiff belongs to a religious body which cannot claim to be in connection with the Church of England as by law established, no contract with the defendant or with any one else can give him a right to use property which is settled to uses in connection with that Church. Their Lordships will address themselves to this latter question, which they think must govern the case. For that purpose they have to examine the acts of the synods which are set forth in this record.

In conducting this examination their Lordships do not enter into the discussions whether or no the Church of South Africa is a branch of or identical with the Church of England. What the charters of the endowment now in question require is connection with the Church of England as by law established; and on this part of the case it is sufficient for the plaintiff if he can show such a connection on the part of the Church of South Africa.

One thing which their Lordships conceive to be necessary for establishing such a connection between the Church of England and another Church is a substantial identity in their standards of faith and doctrine. Where the other Church is that of a colony possessing an independent Legislature, there must be differences, as for instance in the appointment of bishops and in the erection of courts, such as necessarily result from the difference of political circumstances in

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which the Church of England and the other Church find themselves placed. There may probably be other differences, which yet might be too slight to work a disconnection, and which need not now be considered.

Among the Acts of the Synod of 1870 there are several provisions which in the Supreme Court and here have been relied on to shew a disconnection between the Church of South Africa and the Church of England, and which their Lordships will not now discuss in detail. Such are the provisions of the 27th Canon, the declarations which refer to a possible alteration of the creeds, and to a possible alteration of formularies by a general assembly, the provision in the 3rd Canon for the election of bishops without the consent of the Crown, and the constitution of separate Ecclesiastical Courts. Their Lordships are not prepared to say that the effect of these provisions is to disconnect the Church of South Africa from the Church of England. The most important in this respect are the two last-mentioned provisions. But they are the necessary results of the legal and political situation as laid down by Her Majesty in Council, not the expression of any separatist intention. If they worked a disconnection, there would be an absolute impossibility of connection between two Churches so situated. And it appears to their Lordships that, though the existence of separate systems of appointing bishops and of ecclesiastical tribunals is likely enough in the course of time to lead to divergencies, the mere fact of their establishment does not produce any such effect.

It is the first article of the Constitution, and especially the third proviso attached to it, which, in their Lordships' opinion, creates the great difficulty in the way of holding that the Church of South Africa is in connection with the Church of England. That article is as follows :—

“Articles of the Constitution.

“1. The Church of the Province of South Africa receives the doctrine, sacraments and discipline of Christ as the same are contained and commanded in Holy Scripture according as the Church of England has received and set forth the same in its standards of faith and doctrine,

and it receives the Book of Common Prayer, and of ordering of Bishops, Priests and Deacons, to be used according to the form therein prescribed in public prayer and administration of the sacrament and other holy offices, and it accepts the English version of the Holy Scriptures as appointed to be read in churches, and further it disclaims for itself the right of altering any of the aforesaid standards of faith and doctrine.

“Provided that nothing herein contained shall prevent the Church of this Province from accepting, if it shall so determine, any alteration in the formularies of the Church (other than the creeds) which may be adopted by the Church of England, or allowed by any General Synod, Council, Congress or other Assembly of the Churches of the Anglican Communion, or from making at any time such adaptations and abridgments of and additions to the services of the Church as may be required by the circumstances of this province.

“Provided that all changes in and additions to the services of the Church made by the Church of this Province shall be liable to revision by any Synod of the Anglican Communion to which this province shall be invited to send representatives.

“Provided also, that in the interpretation of the aforesaid standards and formularies the Church of this Province be not held to be bound by decisions in questions of faith and doctrine or in questions of discipline relating to faith and doctrine other than those of its own ecclesiastical tribunals, or of such other tribunal as may be accepted by the Provincial Synod as a tribunal of appeal.”

There are in this article and in other parts of the Synodical proceedings general expressions affirming in the strongest way the connection of the Church of South Africa with the Church of England, and its adherence to the faith and doctrine of the Church of England. But all these general expressions are unavailing for the present purpose, if on coming to particulars we find that the constitution substantially excludes portions of the faith and doctrine of the Church of England. The trusts of the property in dispute are

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declared by the Ordinance of 1839, and the grant of June, 1849, in favour of persons belonging to the United Church of England and Ireland as by law established. But the standards of faith and doctrine adopted by that Church are not to be found only in the texts. They are to be found also in the interpretation which those texts have from time to time received at the hands of the tribunals by law appointed to declare and administer the law of the Church.

It has been argued that the Church of South Africa has here done all that existing political circumstances permitted it to do for continued connection with the Church of England; and again that the proviso is a mere statement of the facts of the case, and means no more than this: that as the Church of South Africa must have tribunals of its own, it hereby places on record that their decisions should be binding.

The necessity of separate tribunals and its probable consequences has been above dealt with. But their Lordships consider that the proviso under consideration is very much more than a recognition of the facts of the case; and that the Church of South Africa, so far from having done all in its power to maintain the connection, has taken occasion to declare emphatically that at this point the connection is not maintained.

It was competent to the Church of South Africa to establish for itself any system of law which it thought fit. The facts of the case did not compel it to say that its tribunals shall not take English decisions as authoritative. It might have declared that the decisions of the tribunals established by law for the Church of England, whether past or future, should be binding on the tribunals of the Church of South Africa. That would probably keep the two Churches in connection for the longest period of time, though it would not be necessary to go so far in order to maintain the connection at the outset.

But the obvious course for a Church which desired to be in connection with the Church of England to all intents and purposes would be at least to say at starting that its faith, doctrine and discipline should be those which then prevailed in

the Church of England. Such a Church would, until some fresh departure occurred, be in connection with the Church of England.

Their Lordships were strongly invited by the respondent's counsel to connect the proviso under consideration with the course of some well-known controversies. There is no judicial ground for saying that it was aimed at any special practice or doctrine. But its practical effect may well be illustrated by reference to some important decisions of Her Majesty in Council. For instance, the decisions in the cases of *Gorham v. The Bishop of Exeter* (7) and *Williams v. The Bishop of Salisbury* (5), both delivered prior to the Synod of 1870, affirm and secure the right of a clergyman of the Church of England to preach freely the doctrines which were there in question; but in the Church of South Africa a clergyman preaching the same doctrines may find himself presented for, and found guilty of, heresy. Such a reservation on the part of the Church of South Africa must tend to silence and to exclude those whom the decisions of Her Majesty in Council would protect in the Church of England.

The decisions referred to form part of the constitution of the Church of England as by law established, and the Church and the tribunals which administer its laws are bound by them. That is not the case as regards the Church of South Africa. The decisions are no part of the constitution of that Church, but are expressly excluded from it. There is not the identity in standards of faith and doctrine which appears to their Lordships necessary to establish the connection required by the trusts on which the Church of St. George is settled. There are different standards on important points. In England the standard is the formularies of the Church as judicially interpreted. In South Africa it is the formularies as they may be construed without the interpretation.

It is argued that the divergence made by the Church of South Africa is only potential and not actual, and that we have no right to speculate on its effect until the tribunals of South Africa have shewn whether they will agree or dis-

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agree with those of England. Their Lordships think that the divergence is present and actual. It is the agreement of the two Churches which is potential. The ecclesiastical tribunals of South Africa may possibly decide in all important points as Her Majesty in Council has done. But the question is whether they have the same standard; and, as has been shewn, they have a different standard.

Of course it was perfectly competent to the Church of South Africa to take up its own independent position with reference to the decisions of the tribunals of the Church of England. But, having chosen that independence, they cannot also claim as of right the benefit of endowments settled to uses in connection with the Church of England as by law established.

Such being their Lordships' view of the Synodical proceedings in 1870, it is not necessary to consider further whether the defendant's position is such as to enable him by his conduct to give to the plaintiff the rights he claims, or whether the suit is so constituted as to enable the plaintiff to obtain any decree for the enjoyment of property situated as this is. It will have been seen by the foregoing observations that there is a difficulty on both these points.

Their Lordships wish to add their opinion that Courts of law cannot settle in any satisfactory way questions affecting permanent endowments after a total change of circumstances has occurred, and their concurrence with the Chief Justice in thinking that the Legislature alone can properly deal with such cases.

The result is that their Lordships will humbly advise Her Majesty to dismiss this appeal. The costs must follow the result.

Solicitors—Moore & Correy, for appellant;
Venning, Sons & Mannings, for respondent.

1882.
July 7.

THE REV. JOHN ROSS AND
OTHERS (*appellants*) v. THE
CHARITY COMMISSIONERS (*re-*
spondents); in re ST. DUNSTAN-IN-THE-EAST.

Endowed Schools Act, 1869, s. 14—
Charitable Use—Gift within Fifty Years
—Interests of a Class.

The Endowed Schools Act, 1869, by section 14, sub-section 1, provides that nothing in the Act shall authorise the making of any scheme interfering with any endowment "originally given to charitable uses" less than fifty years before the commencement of the Act, unless the governing body assent:—Held, that an endowment given to charitable uses more than fifty years before the Act, but appropriated by the Court of Chancery to educational purposes within fifty years, is not within the above section.

Section 11 of the Act and clause 5 of the Amendment Act, 1873, require the Commissioners, in framing a scheme, to have due regard to the educational interests of any particular class who are entitled:—Held, that a scheme providing that the educational fees of a particular class should be increased was not contrary to the provisions of the section or clause.

This was a petition of the rector of the parish of St. Dunstan-in-the-East, in the City of London, and of the churchwardens of that parish, and certain other persons, being the trustees appointed under a scheme of the Court of Chancery, praying that it might be declared that the property held by the petitioners under the scheme of the High Court of Chancery was not liable to be dealt with under the Endowed Schools Act, 1869, and the Amending Acts, by any scheme of the Endowed Schools Commissioners.

The facts are sufficiently stated in the judgment.

*Charles, Q.C., E. Cooper Willis, Q.C., and F. Cooper Willis, for the petitioners.—*There is no endowed school in connection with the charities of this parish within the meaning of the Endowed Schools Act. The Charity Commissioners have no power to frame a scheme under the Endowed

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Schools Acts, save for the purpose of reorganising an endowed school. The scheme interferes with an endowment originally given to charitable uses, within the meaning of the Acts, less than fifty years before the commencement of the principal Act. The governing body of such endowment have not assented and do not assent to such scheme. Due regard is not had in the scheme to the educational interests of persons of the same class resident within the particular area.

Davey, Q.C., and *Vaughan Hawkins*, for the respondents.—These charities are liable to be dealt with, and have been properly dealt with by the scheme under appeal made under the provisions of the Endowed Schools Act, 1869. These charities are an endowment which can be dealt with by a scheme made under these Acts, as if the whole thereof were an educational endowment, subject to the condition that the part applicable to charitable uses, not educational, shall not be diverted by the scheme from such uses, which condition has been complied with. In the scheme under appeal due regard is had to all educational interests to which regard is by the Acts required to be had. The scheme is in all respects within the scope of the Acts.

SIR MONTAGUE E. SMITH delivered the judgment of their Lordships (1):—

This is a petition of the rector of the parish of St. Dunstan-in-the-East, the churchwardens, and certain other persons, trustees of property belonging to the parish administered under a scheme of the Court of Chancery, made on the 15th of June, 1867.

It appears that in the parish of St. Dunstan-in-the-East there are several charitable endowments given by various donors and at various periods in the history of the parish. The property so given was held for charitable purposes, but none of the uses were for educational purposes, except as regards a small annuity of 10*l.* which was given by Sir John Moore.

In the year 1852 an information, at the relation of the Attorney-General, was

(1) Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier, and Sir John Mellor.

filed against the churchwardens for an account of the charities, and for a scheme for their due administration. The suit was delayed for a considerable time; but ultimately, on the 15th of June, 1867, a scheme was settled, and approved by an Order of the Court. No decisive action had been taken to carry its objects into execution before the passing of the Endowed Schools Act, 1869. The scheme of the Court of Chancery provided for the appropriation of a large part of the charitable income to the purposes of education. The 25th section of it prescribes the manner in which the property shall be dealt with. It is as follows:—"The trustees shall, subject to the provisions of this scheme, apply the income arising from the charities in the following manner, that is to say"—then follows a detailed description of the payments to be made for the benefit of the church and parish, other than for educational purposes, namely,—“To the rector, 210*l.*; the afternoon lecturer, to cease as after mentioned, 84*l.*; other officers and servants of the church and parish, to be reduced as hereinafter mentioned, 329*l.*; other expenses of divine worship, about 160*l.* 9*s.* 10*d.*; repairs (not exceeding), or such larger sum as Charity Commissioners approve, 200*l.*; to be laid by every year for structural repairs for the first five years and then to be reduced to 100*l.* a year, to be so laid by, 200*l.*; management (not exceeding), 120*l.*; subscription to Tower ward schools, 50*l.*; present gifts and subsequent annuities to the poor (to be increased as hereinafter mentioned to 400*l.*), about 280*l.*; gifts to the prisons, about 35*l.*;" (the total of those payments amounts to 1,668*l.*) The clause then provides, "and the entire surplus in the support and maintenance of the schools hereinafter mentioned."

The scheme provides for the school, and the manner in which it shall be established, by the clauses commencing with clause 35:—"The trustees shall be at liberty to apply the moneys hereinafter authorised to be raised and accumulated, and the surplus income of the charities, after providing for the specific payments by this scheme provided, in the purchase of a site and the erection thereon of school premises suitable for a middle-class day

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school, to be called St. Dunstan's College, capable of accommodating 400 boys." The following clauses are material to the questions raised on the appeal. Clause 47 provides "that there shall be four masters of the school. The head and second masters shall be graduates of one of the English Universities, or of Trinity College, Dublin; and all the four masters shall be members of the Church of England, and competent to give instruction in the various branches of education hereinafter mentioned." Section 44 contains the following provision:—"The instruction to be afforded in the school shall include the principles of the Christian religion, according to the doctrine of the Church of England." The 45th provides:—"Such number of day scholars shall be admitted by the trustees to receive instruction at the school as can be properly accommodated, and each day scholar whose parent, or person standing to him *in loco parentis*, shall reside or have his or her place of business or employment in the parish of St. Dunstan-in-the-East, shall pay to the trustees such sum, not exceeding 2*l.* per annum, and all other boys shall pay to the trustees such sum, not exceeding 8*l.* per annum, as the trustees shall direct." Then provision is made in clause 56 for the foundation of scholarships, and in clause 57 of exhibitions.

This scheme not having been carried into execution, and the Attorney-General being of opinion that the part of the property which had been appropriated by it to educational uses fell within the provisions of the Endowed Schools Act, 1869, the Charity Commissioners were applied to, and in due course the scheme was prepared by them which is the subject of the present petition.

The scheme of the Commissioners altered and modified in various respects the scheme approved by the Court of Chancery; but it is unnecessary to go at length into its provisions. It will be sufficient to refer to such of them as are made material by the objections which have been urged at their Lordships' bar.

The first objection to the scheme is one of considerable importance. It is that the scheme has no validity at all, and is not authorised by the Endowed Schools Act,

inasmuch as it has been made without the consent of the old governing body. The objection, as originally submitted to their Lordships by Mr. Charles, was that the endowment was not an educational endowment within the meaning of the Act; but, after a short discussion during the argument, Mr. Charles gave up that point; indeed, it was impossible to maintain it, because these endowments distinctly fall within the definition of "educational endowments" given in the fifth section of the Act: "In this Act, unless the context otherwise requires, the term 'educational endowment' means an endowment or any part of an endowment which, or the income whereof, has been made applicable or is applied for the purposes of education at school of boys and girls, or either of them, or of exhibitions tenable at a school or an university or elsewhere, whether the same has been made so applicable by the original instrument of foundation or by any subsequent Act of Parliament, letters patent, degree, scheme, order, instrument or other authority." It is plain that this is an educational endowment falling within the second branch of this interpretation of the words. The endowment has been made applicable to the purposes of education by a scheme and an order of the Court of Chancery. The objection ultimately relied on was rested on the 14th section of the Act, sub-section 1: "Nothing in this Act shall authorise the making of any scheme interfering, first, with any endowment or part of an endowment (as the case may be) originally given to charitable uses or to such other uses as are referred to in this Act less than fifty years before the commencement of this Act, unless the governing body of such endowment assent to the scheme." The governing body has not assented to this scheme, but dissents and petitions against it. The contention is that this property having been appropriated to educational uses by the scheme of the Court of Chancery within the last fifty years, it cannot be dealt with without the consent of the governing body appointed under that scheme; but, on looking at the words of the Act, it is plain that the sub-section refers only to the original foundation of a charity within that period. The words are, "Endowment

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originally given to charitable uses, or to such uses as are referred to in this Act." Now none of the properties in this case were originally given to such uses within the period of fifty years before the Act. The original donations, it is admitted, were long anterior to such period. The scheme settled and approved by the Court of Chancery can in no way be considered as the original gift within the meaning of the Act. The Court is not the founder or the donor of the charity. It is merely the authority which has appropriated to educational purposes property originally given to charitable uses. Their Lordships are therefore of opinion that this endowment does not fall within the words which are relied upon, and, consequently, that the objection made to the scheme arising from the want of assent of the old governing body must fail.

This objection is the only one to the scheme in its entirety. But three objections have been submitted to their Lordships upon different parts of the scheme, which, it is said, contravene the provisions of the Endowed Schools Act. One of those objections arises on section 11 of the Act, which is in these terms: "It shall be the duty of the Commissioners in every scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons are entitled, and that whether as inhabitants of a particular area, or otherwise, to have due regard to the educational interests of such class of persons." Also, by the 5th clause of the Amendment Act of 1873, it is provided: "It shall be the duty of the Commissioners in every scheme to have the same regard to the educational interests of persons in a particular class of life as they are by section 11 of the principal Act required to have to the educational interests of any particular class of persons."

It is said that these provisions have not been regarded by the Commissioners, because, whilst, under the scheme of the Court of Chancery, the boys belonging to the parish of St. Dunstan-in-the-East were entitled to be admitted as day scholars for a sum not exceeding 2*l.* a year, by the scheme of the Charity Commissioners that sum has been greatly exceeded. The

scheme of the Charity Commissioners, section 40, is this: "All boys, including boarders, except as herein provided, shall pay tuition fees, to be fixed from time to time by the governors, at the rate of not less than 8*l.* nor more than 16*l.* a year for any boy, except that for any boy whose parent, or person occupying the place of parent, resides or has his place of business or employment in the parish of St. Dunstan-in-the-East, and who is in the opinion of the governors in need of such aid out of the endowment, the tuition fee shall be one half of that which would otherwise be payable by such boy." A similar distinction in favour of the boys of St. Dunstan's parish is made in the case of boarders—a distinction, it is to be observed, which was not made in their favour, as boarders, in the Chancery scheme.

Although the Charity Commissioners have increased the amount which the boys of St. Dunstan's parish are liable to pay for tuition fees, and have added the condition that the trustees shall be satisfied that aid is needed by the parents of such boys, their Lordships cannot say that they have failed in their duty to have due regard to the educational advantages of the class of persons entitled to favourable distinction under the former scheme. It is perfectly true that they have altered those conditions; but it was entirely within their power to do so, as the Act enables them to modify educational privileges and advantages; and their Lordships certainly would not interfere with their discretion in making alterations and modifications, unless they saw that it was so wrongly exercised that the Commissioners could not have paid due regard to these privileges and advantages. Changes may happen in parishes which may render it desirable to modify existing privileges: the education given may be better; the means of parents living in the parish may be more ample; all matters of this kind may be taken into consideration by the Commissioners, whilst having due regard to the interests of the classes entitled to educational advantages. It is for them to decide on the extent and degree of modification which new circumstances may require to be made, and it is not for this Commit-

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tee to override their discretion, unless they are satisfied that it contravenes the provisions of the Act.

The next objection arises upon sections 18 and 19 of the Endowed Schools Act. The scheme of the Court of Chancery, section 37, provides that "there shall be four masters of the school. The head and second masters shall be graduates of one of the English Universities, or of Trinity College, Dublin; and all the four masters shall be members of the Church of England, and competent to give instruction in the various branches of education hereinafter mentioned"; and section 44 of the Chancery scheme provides that "the instruction to be afforded in the school shall include the principles of the Christian religion, according to the doctrine of the Church of England." It was contended that, having regard to the provisions of the 65th section of the scheme of the Charity Commissioners, providing that "no persons shall be disqualified for being a master in the college by reason only of his not being, or not intending to be in holy orders," was unauthorised and wrong. By the Endowed Schools Act, it is provided in section 18, "In every scheme (except as hereinafter mentioned) relating to an endowed school, the Commissioners shall provide that a person shall not be disqualified for being a master in such school by reason only of his not being or not intending to be in holy orders." The exception is contained in section 19, which enacts as follows: "A scheme relating to" sub-section 2: "Any educational endowment the scholars educated by which are in the opinion of the Commissioners (subject to appeal to Her Majesty in Council, as mentioned in this Act) required by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder or under his authority in his lifetime, or within fifty years after his death (which terms have been observed down to the commencement of this Act), to learn or to be instructed according to the doctrines or formularies of any particular church, sect or denomination, is excepted from the foregoing provisions respecting religious instruction and attendance at religious worship (other than the provisions for the

exemption of day scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf), and respecting the qualification of the governing body and masters (unless the governing body, constituted as it would have been if no scheme under this Act had been made, assents to such scheme)." The governing body, of course, have not assented to the provision complained of. The question is, whether the present endowment falls within this exception. That raises very much the same question as the first which their Lordships have discussed. The words to be construed are:—"Any educational endowment the scholars educated by which are required by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder or under his authority in his lifetime, or within fifty years after his death, to be instructed according to the doctrines of a particular Church, shall be excepted." The original foundation of these endowments, as far as we know it, does not provide for the religious education of scholars. In fact, the original foundation, except with regard to an annuity of 10*l.*, has nothing to do with education at all. The words of the Act clearly apply to the original foundation by the founder or donor of the property for charitable uses, and to statutes and regulations made by him, and cannot be held to comprehend a scheme of the Court of Chancery appropriating to educational purposes property which had been already given for charitable uses. Their Lordships, therefore, think that this objection also fails.

The only remaining objection, upon which there has been a good deal of discussion, relates to the sum of 120*l.* "for management," which is included in the list of payments applicable to other than educational purposes in the Chancery scheme, and is omitted from the income now assigned to the old trustees. The 2nd section of the scheme of the Charity Commissioners provides for the appropriation of income to uses other than educational, as follows:—"The yearly or other sums applicable under the clauses of the above-mentioned Chancery scheme numbered respectively 25, 26, 27, 28, 29,

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31, 32 and 33, except the sum payable for 'management'—such yearly sums, except as aforesaid, being the part of the endowment of the foundation applicable, subject, as in that scheme provided, for purposes not educational—shall be paid out of the income of the foundation, by the governing body, hereinafter constituted and called the governors, to the trustees constituted under the said Chancery scheme." All, therefore, which was appropriated to charities other than educational by the Chancery scheme is still to be paid, except the sum of 120*l.* for management.

The right to petition Her Majesty to withhold her approval from a scheme depends, as far as this question is concerned, on sections 39 and 24 of the Endowed Schools Act. The part of section 39 which is relied on is sub-section 3: "If the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected by such scheme, feels aggrieved by the scheme on the ground:—(3) of the scheme being one which is not within the scope of or made in conformity with this Act;" such governing body may petition Her Majesty. It is said that this scheme is not made in conformity with the Act, because it contravenes section 24, sub-section 1, which is this:—"Where part of an endowment is an educational endowment within the meaning of this Act, and part of it is applicable or applied to other charitable uses, the scheme shall be in conformity with the following provisions (except so far as the governing body of such endowment assent to the scheme departing therefrom), that is to say:—(1) the part of the endowment or annual income derived therefrom which is applicable to such other charitable uses shall not be diverted by the scheme from such uses." No part of the money which, by the scheme of the Court of Chancery, is directly made ap-

plicable to charitable uses is diverted by the new scheme. But it is said it throws upon the old trustees the expenses of management. Now that is by no means clear in point of fact. Under the Chancery scheme the trustees had the whole management and control of the property. But by virtue of the Act, and of the present scheme of the Commissioners, the property is vested in the Official Trustee of Charity Lands, and is to be managed and administered by the governors under that scheme. They alone have the management of the property, and are responsible for it; and they are to pay, and the trustees to receive, certain specific sums for specific purposes. The provision made by various clauses of the Chancery scheme, for the management of the property and payment to those who managed it, seems to be superseded by the new provision made for its management by the scheme of the Commissioners. Their Lordships are not satisfied upon the facts, as far as they have been brought to their knowledge, that the Commissioners have contravened the provisions of the Act in not continuing to the trustees the sum assigned for the expenses of management in the scheme of the Court of Chancery.

Their Lordships, therefore, are of opinion that this petition fails, and that no grounds have been established for advising Her Majesty to withhold her approval from the scheme of the Commissioners. They have considered the question of costs, but are not disposed to make any order with regard to them.

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Solicitors—Shearman & Son, for petitioners;
Farrer & Co., for respondents.

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THE PUBLIC GENERAL ACTS

OF THE UNITED KINGDOM OF

GREAT BRITAIN AND IRELAND:

PASSED IN THE

FORTY-FIFTH AND FORTY-SIXTH YEARS

OF THE REIGN OF HER MAJESTY

QUEEN VICTORIA

At the Parliament begun and holden at Westminster, the 29th Day of April, *Anno Domini* 1880, in the Forty-third Year of the Reign of our Sovereign Lady VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith:
Being the **THIRD SESSION** of the **TWENTY-SECOND PARLIAMENT** of the United Kingdom of **GREAT BRITAIN and IRELAND**.



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CHAP. 1.

Consolidated Fund (No. 1) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 313,270l. out of the Consolidated Fund for the service of the year ending 31st March 1882.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of Three hundred and thirteen thousand two hundred and seventy pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two. (13th March 1882.)

Most Gracious Sovereign,
We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two the sum of three hundred and thirteen thousand two hundred and seventy pounds.

2. The Commissioners of the Treasury may borrow from time to time on the credit of the said sum any sum or sums not exceeding in the whole the sum of three hundred and thirteen thousand two hundred and seventy pounds, and shall repay the moneys so borrowed with interest not exceeding five pounds per centum per annum out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 1) Act, 1882.

CHAP. 2.

Post Office (Reply Post Cards) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Acts not to prevent issue of reply post cards.*

An Act to authorise the use of Reply Post Cards. (13th March 1882.)

WHEREAS the Post Office Act, 1875, authorised the Treasury from time to time by warrant to fix the rates of postage to be charged by or under the authority of the Postmaster-General in respect (among other postal packets) of post cards, conveyed or delivered for conveyance by post, whether in the United Kingdom or elsewhere, subject to the proviso (among others) that the highest rate for an inland post card shall not exceed one half-penny:

And whereas it is proposed to issue such reply post cards as herein-after mentioned, and doubts have arisen as to the power to issue the same, and it is expedient to remove such doubts:

Be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Post Office (Reply Post Cards) Act, 1882, and this Act may be cited together with the Post Office (Duties) Acts, 1840 to 1875, as the Post Office (Duties) Acts, 1840 to 1882.

2. Nothing in the Post Office (Duties) Acts, 1840 to 1875, or any of them, shall be deemed to prevent the issue of a reply post card, or the fixing of a rate of postage for a reply post card not exceeding double the rate charged for an ordinary post card.

A "reply post card" means a post card of such a character that the person receiving the same through the post may without further payment again transmit the same or a part thereof through the post.

A reply post card or any part thereof which may be again transmitted through the post without further payment shall be deemed to be a postal packet within the meaning of the above-mentioned Acts.

CHAP. 3.

Slate Mines (Gunpowder) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Title of Act.*
2. *Power to exempt slate mines from certain regulations relating to the use of explosives.*

An Act to amend the Law relating to the use of Gunpowder in Slate Mines. (29th March 1882.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Slate Mines (Gunpowder) Act, 1882.

2. (1.) It shall be lawful for one of Her Majesty's Principal Secretaries of State, if he shall think fit, from time to time, on the application of the owner, agent, or manager of any slate mine, to exempt such mine from the general rule contained in sub-section two of section twenty-three of the Metalliferous Mines Regulation Act, 1872, with respect to the use of gunpowder or other explosive substances, or any portion of such rule.

(2.) The application shall be transmitted by the owner, agent, or manager to the inspector of the district, and the requirements of sections twenty-four and twenty-eight of the

Metalliferous Mines Regulation Act, 1872, as to the posting of any proposed special rule shall extend to any such application: Provided that the exemption shall not come into force until granted by the Secretary of State.

(3.) The Secretary of State may at any time revoke such exemption, but such revocation

shall not come into force until written or printed notice thereof has been posted up at the mine for twenty-four hours.

(4.) A list of the exemptions granted or revoked under this Act shall be set forth by the inspector of the district in his annual report.

CHAP. 4.

Consolidated Fund (No. 2) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 424,844l. 14s. 10d. out of the Consolidated Fund for the service of the years ending 31st March 1881 and 1882.*
2. *Issue of 6,793,498l. out of the Consolidated Fund for the service of the year ending 31st March 1883.*
3. *Power to the Treasury to borrow.*
4. *Short title.*

An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-one, one thousand eight hundred and eighty-two, and one thousand eight hundred and eighty-three. (29th March 1882.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sums herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-one and one thou-

sand eight hundred and eighty-two, the sum of four hundred and twenty-four thousand eight hundred and forty-four pounds fourteen shillings and tenpence.

2. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three, the sum of six million seven hundred and ninety-three thousand four hundred and ninety-eight pounds.

3. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sums, any sum or sums not exceeding in the whole the sum of seven million two hundred and eighteen thousand three hundred and forty-two pounds fourteen shillings and tenpence, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said sums were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

4. This Act may be cited as the Consolidated Fund (No. 2) Act, 1882.

CHAP. 5.

Duke of Albany (Establishment) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Power for Her Majesty to grant an additional annuity of ten thousand pounds for life to Prince Leopold George Duncan Albert Duke of Albany.*
2. *Payment of proportionate part of annuity.*
3. *Power for Her Majesty to grant an annuity of six thousand pounds to Her said Serene Highness in the event of her surviving His Royal Highness the Duke of Albany.*
4. *Annuities granted by this Act to be charged on the Consolidated Fund.*
5. *Short title.*

An Act to enable Her Majesty to provide for the Establishment of His Royal Highness the Duke of Albany and Her Serene Highness Princess Helen Frederica Augusta of Waldeck and Pyrmont, and to settle an Annuity on Her Serene Highness.

(21st April 1882.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, having taken into consideration Your Majesty's most gracious message that Your Majesty has agreed to a marriage proposed between Your Majesty's fourth son His Royal Highness Leopold George Duncan Albert Duke of Albany and Her Serene Highness the Princess Helen Frederica Augusta, fourth daughter of His Serene Highness the Reigning Prince of Waldeck and Pyrmont, do most humbly beseech Your Majesty that it may be enacted:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for Her Majesty in order to provide for the establishment of His Royal Highness Prince Leopold George Duncan Albert Duke of Albany and Her Serene Highness Princess Helen Frederica Augusta of Waldeck and Pyrmont, by letters patent under the great seal of the United Kingdom of Great Britain and Ireland, to grant unto His said Royal Highness, or to such persons as Her Majesty may think fit to name in the said letters patent, on trust for His said Royal Highness, and subject to such conditions as Her Majesty may direct, an annuity of ten

thousand pounds for life; such annuity to commence from the date of the marriage of His said Royal Highness, and to be paid quarterly on the fifth day of January, the fifth day of April, the fifth day of July, and the tenth day of October, and to be in addition to the annuity heretofore granted to him by Parliament.

2. The first payment of such portion of the said annuity as may have accrued between the date of the said marriage and the first of the said quarterly days which happens after the said marriage shall be made on such last-mentioned quarterly day, and a proportionate part shall be payable for the period between the last quarterly day of payment and the date of the determination thereof: provided that in the event of His said Royal Highness succeeding to any sovereignty or principality abroad, it shall be lawful for Her Majesty or her successors, with the consent of Parliament, to revoke or reduce the said annuity by warrant under the sign manual.

3. It shall be lawful for Her Majesty or her successors, by letters patent under the great seal of the United Kingdom of Great Britain and Ireland, to grant to Her said Serene Highness in case of her surviving His said Royal Highness, or to such persons as Her Majesty or her successors may think fit to name in the said letters patent, on trust for Her said Serene Highness in the event of her so surviving, an annuity of six thousand pounds, to commence from the date of the death of His said Royal Highness and to continue from thenceforth during the life of Her said Serene Highness, and to be payable on the quarterly days aforesaid, the first payment to be made on such of the said quarterly days as happens next after the death of His said Royal Highness of such portion of the said annuity as may have accrued between the date of the said death and the said quarterly day; and a proportionate part thereof to be payable

for the period from the last quarterly day of payment to the date of the determination thereof.

4. The annuities granted in pursuance of this Act shall, if Her Majesty think fit so to direct, be personal and inalienable provisions, and the same shall be charged on and payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the

growing produce thereof, after paying and reserving sufficient to pay such sums as may have been directed to be paid out of the said fund by former Acts of Parliament, but with preference to all other payments which may hereafter be charged on the said fund.

5. This Act may be cited as the Duke of Albany (Establishment) Act, 1882.

CHAP. 6.

General Police and Improvement (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation.*
3. "*Householder*" to include male and female occupiers of 4l. and upwards.

An Act to amend the law in regard to householders under the General Police and Improvement Acts in Scotland.
(28th April 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the General Police and Improvement (Scotland) Act, 1882.

2. The expression "the General Police and Improvement Acts" means and includes the Act thirteen and fourteen Victoria, chapter thirty-three, the General Police and Improvement (Scotland) Act, 1862, the General Police

and Improvement (Scotland) Act, 1862, Amendment Act, and any Acts amending the same.

3. Section three of the General Police and Improvement (Scotland) Act, 1862, Amendment Act is hereby repealed, and in lieu thereof it is enacted as follows: The word "householder" in the General Police and Improvement Acts means and includes "a male occupier of lands or premises of the yearly value of four pounds and upwards as appearing on the valuation roll," and also "a female occupier of lands or premises as aforesaid who is not married, or being married does not live in family with her husband": Provided always, that no female shall be eligible for election as a commissioner or trustee of police.

Wherever words occur in the General Police and Improvement Acts which import the masculine gender, the same shall be held to include females for the purposes of this Act.

CHAP. 7.

Army (Annual) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Army Act (44 & 45 Vict. c. 58.) to be in force for specified times.*
3. *Prices in respect of billeting.*
4. *Correction of misprints in 44 & 45 Vict. c. 58.*
5. *Removal of doubts as to s. 90 (5) of 44 & 45 Vict. c. 58. as to discharged soldiers.*
6. *Printing of amendments.*

SCHEDULE. .

An Act to provide, during twelve months,
for the Discipline and Regulation of
the Army. (28th April 1882.)

WHEREAS the raising or keeping a standing army within the United Kingdom of Great Britain and Ireland in time of peace, unless it be with the consent of Parliament, is against law :

And whereas it is adjudged necessary by Her Majesty, and this present Parliament, that a body of forces should be continued for the safety of the United Kingdom, and the defence of the possessions of Her Majesty's Crown, and that the whole number of such forces should consist of one hundred and thirty-two thousand nine hundred and five men, including those to be employed at the depôts in the United Kingdom of Great Britain and Ireland for the training of recruits for service at home and abroad, but exclusive of the numbers actually serving within Her Majesty's Indian possessions :

And whereas it is also judged necessary for the safety of the United Kingdom, and the defence of the possessions of this realm, that a body of Royal Marine forces should be employed in Her Majesty's fleet and naval service, under the direction of the Lord High Admiral of the United Kingdom, or the Commissioners for executing the office of Lord High Admiral aforesaid :

And whereas the said marine forces may frequently be quartered or be on shore, or sent to do duty or be on board transport ships or vessels, merchant ships or vessels, or other ships or vessels, or they may be under other circumstances in which they will not be subject to the laws relating to the government of Her Majesty's forces by sea :

And whereas no man can be forejudged of life or limb, or subjected in time of peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers, and according to the known and established laws of this realm; yet nevertheless it being requisite, for the retaining all the before-mentioned forces, and other persons subject to military law in their duty, that an exact discipline be observed, and that persons belonging to the said forces who mutiny or stir up sedition, or desert Her Majesty's service, or are guilty of crimes and offences to the prejudice of good order and military discipline, be brought to a more exemplary and speedy punishment than the usual forms of the law will allow :

And whereas the Army Act, 1881, will expire—

(a.) In the United Kingdom, the Channel Islands, and the Isle of Man, on the thir-

tieth day of April one thousand eight hundred and eighty-two; and

(b.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, on the thirty-first day of July one thousand eight hundred and eighty-two; and

(c.) Elsewhere, whether within or without Her Majesty's dominions, on the thirty-first day of December one thousand eight hundred and eighty-two :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Army (Annual) Act, 1882.

2. The Army Act, 1881, shall be and remain in force during the periods herein-after mentioned, and no longer, unless otherwise provided by Parliament; that is to say,

(1.) Within the United Kingdom, the Channel Islands, and the Isle of Man, from the thirtieth day of April one thousand eight hundred and eighty-two to the thirtieth day of April one thousand eight hundred and eighty-three, both inclusive; and

(2.) Elsewhere in Europe, inclusive of Malta, also in the West Indies and America, from the thirty-first day of July one thousand eight hundred and eighty-two to the thirty-first day of July one thousand eight hundred and eighty-three, both inclusive; and

(3.) Elsewhere, whether within or without Her Majesty's dominions, from the thirty-first day of December one thousand eight hundred and eighty-two to the thirty-first day of December one thousand eight hundred and eighty-three, both inclusive; and the day from which the Army Act, 1881, is continued in any place by this Act is in relation to that place referred to in this Act as the commencement of this Act.

The Army Act, 1881, while in force shall apply to persons subject to military law, whether within or without Her Majesty's dominions.

A person subject to military law shall not be exempted from the provisions of the Army Act, 1881, by reason only that the number of the forces for the time being in the service of Her Majesty, exclusive of the marine forces, is either greater or less than the number herein-before mentioned.

3. There shall be paid to the keeper of a victualling house for the accommodation pro-

vided by him in pursuance of the Army Act, 1881, the prices specified in the Schedule to this Act.

Amendments of Army Act, 1881.

4. Whereas the misprints herein-after mentioned occur in the Army Act, 1881, and it is expedient to correct the same:

Be it therefore enacted as follows:

- (1.) In section forty-six of the Army Act, 1881, the words "imprisonment exceeding seven days" shall be substituted for the words "punishment exceeding seven days," in the ninth sub-section.
- (2.) In section eighty-seven of the Army Act, 1881, the words "a proclamation in pursuance of the enactments relating to the calling out of the reserve on permanent service" shall be substituted for "a proclamation in pursuance of this Act" in the first sub-section.
- (3.) In section one hundred and thirty-eight of the Army Act, 1881, "section seventy-three," shall be substituted for the words "section seventy-one" in the third sub-section.
- (4.) In section one hundred and forty-four of the Army Act, 1881, the words "respecting his contract" shall be substituted for the words "respecting his conduct," in the second sub-section.

(5.) In section one hundred and forty-five of the Army Act, 1881, the words "when any order or decree" shall be substituted for the words "when any order, decree," in the second sub-section.

(6.) In section one hundred and seventy-five of the Army Act, 1881, the words "Indian military law" shall be substituted for the words "that law" in the seventh sub-section.

5. Whereas doubts may arise as to whether sub-section five of section ninety of the Army Act, 1881, applies to all soldiers of the regular forces when discharged, or only to such of those soldiers as are specified in the foregoing provisions of that section, and it is expedient to remove such doubts; Be it therefore enacted as follows:—

In section ninety of the Army Act, 1881, the words "as mentioned in the second sub-section of this section" shall be added after the words "or his re-engagement" in the fifth sub-section.

6. In all copies of the Army Act, 1881, which may be printed after the commencement of this Act the words by this Act directed to be substituted for other words shall be printed therein in lieu of the latter words, and the words directed by this Act to be added shall be added thereto.

SCHEDULE.

Accommodation to be provided.	Maximum Price.
Lodging and attendance for soldier where hot meal furnished -	Two pence halfpenny per night.
Hot meal as specified in Part I. of the Second Schedule to the Army Act, 1881.	One shilling and one penny halfpenny each.
Where no hot meal furnished, lodging and attendance, and candles, vinegar, salt, and the use of fire, and the necessary utensils for dressing and eating his meat.	Four pence per day.
Ten pounds of oats, twelve pounds of hay, and eight pounds of straw per day for each horse.	One shilling and nine pence per day.
Lodging and attendance for officer - - - - -	Two shillings per night.

Note.—An officer shall pay for his food.

CHAP. 8.

Consolidated Fund (No. 3) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 9,282,435l. out of the Consolidated Fund for the service of the year ending 31st March 1883.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of nine million two hundred and eighty-two thousand four hundred and thirty-five pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three.

(19th May 1882.)

Most Gracious Sovereign,

We Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of

the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three the sum of nine million two hundred and eighty-two thousand four hundred and thirty-five pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of nine million two hundred and eighty-two thousand four hundred and thirty-five pounds, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 3) Act, 1882.

CHAP. 9.

Documentary Evidence Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Documents printed under superintendence of Stationery Office receivable in evidence.*
3. *Penalty for forgery.*
4. *Application of Act to Ireland.*

An Act to amend the Documentary Evidence Act, 1868, and other enactments relating to the evidence of documents by means of copies printed by the Government Printers.

(19th June 1882.)

WHEREAS by the Documentary Evidence Act, 1868, and enactments applying that Act, divers proclamations, orders, regulations, rules, and other documents may be proved by the production of copies thereof purporting to be printed by the Government Printer, and the Government Printer is thereby defined to mean and include the Printer to Her Majesty:

And whereas divers other enactments provide that copies of Acts of Parliament, regulations, warrants, circulars, gazettes, and other documents shall be admissible in evidence if purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under the authority of Her Majesty:

And whereas it is expedient to make further provision respecting the printing of the copies aforesaid:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Documentary Evidence Act, 1882.

2. Where any enactment, whether passed before or after the passing of this Act, provides that a copy of any Act of Parliament, proclamation, order, regulation, rule, warrant, circular, list, gazette, or document shall be conclusive evidence, or be evidence, or have

any other effect, when purporting to be printed by the Government Printer, or the Queen's Printer, or a printer authorised by Her Majesty, or otherwise under Her Majesty's authority, whatever may be the precise expression used, such copy shall also be conclusive evidence, or evidence, or have the said effect (as the case may be) if it purports to be printed under the superintendence or authority of Her Majesty's Stationery Office.

3. If any person prints any copy of any Act, proclamation, order, regulation, royal warrant, circular, list, gazette, or document which falsely purports to have been printed under the superintendence or authority of Her Majesty's Stationery Office, or tenders in evidence any copy which falsely purports to have been printed as aforesaid, knowing that the same was not so printed, he shall be guilty of felony, and shall, on conviction, be liable to penal servitude for a term not exceeding seven years, or to be imprisoned for a term not exceeding two years, with or without hard labour.

4. The Documentary Evidence Act, 1868, as amended by this Act, shall apply to proclamations, orders, and regulations issued by the Lord Lieutenant or other chief governor or governors of Ireland, either alone or acting with the advice of the Privy Council in Ireland, as fully as it applies to proclamations, orders, and regulations issued by Her Majesty.

In the same Act, the term "the Privy Council" shall include the Privy Council in Ireland, or any committee thereof.

In the same Act, and in this Act, the term "the Government Printer" shall include any printer to Her Majesty in Ireland and any printer printing in Ireland under the superintendence or authority of Her Majesty's Stationery Office.

CHAP. 10.

Military Manœuvres Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

Regulations as to the forces.

2. *Passage of forces over lands.*

3. *Lands closed against passage of forces.*

4. *Compensation for damage done by forces.*

5. *Commission for declaring what lands to be authorised for purposes of Act, and making regulations.*

6. *Mode of determining the compensation payable in respect of damage by passage of forces.*

Regulations as to persons not belonging to the forces, and Miscellaneous.

7. *Offences against Act.*
8. *Constables to be appointed for repression of offences against Act.*
9. *Justices to be appointed for punishment of offences against Act.*
10. *Evidence of orders and regulations.*

Definitions.

11. *Definitions.*

Duration of Act.

12. *Time during which Act is to remain in force.*
- SCHEDULE.

An Act for making provision for facilitating the Manœuvres of Troops to be assembled during the present Summer.
(19th June 1882.)

WHEREAS it is intended that during the present summer a large body of troops should be assembled for the purposes of military instruction within the area described in the schedule hereto, which area is herein-after referred to as the limits of this Act:

And whereas it is expedient that provision should be made for facilitating the exercise of the said troops, and for making compensation to persons whose lands may be damaged by the passage of such troops, and for other purposes connected with such assemblage of troops:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the "Military Manœuvres Act, 1882."

Regulations as to the forces.

2. Within the limits of this Act the forces to which this Act applies, in this Act referred to as "the forces," with their arms, munitions of war, and stores, may pass over any unenclosed or any authorised enclosed lands, whether public or private, and may execute military manœuvres on such lands. They may also encamp on any unenclosed lands, and for the purpose of any encampment, or for military exercises, dig trenches and throw up temporary field works on any such lands. The forces may supply themselves with water from any authorised sources of water, and may, for the purpose of obtaining such supply, dam up any running water, use any private or occupation

roads, and do all such other acts and things as may be required.

3. Nothing in this Act contained shall empower the forces to enter upon or interfere with any dwelling-house, farmyard, garden, orchard, pleasure ground, nursery ground, park, or any premises enclosed within the curtilage of or attached to any dwelling-house, or any lands bearing roots or standing crops, or any underwoods, or any enclosed lands, except enclosed lands which may be declared to be lands on which the forces are authorised to enter, in this Act referred to as authorised enclosed lands.

4. Full compensation shall be made, out of moneys to be provided by Parliament, for any damage that may be caused to any lands within the limits of this Act, by or in consequence of the forces, or the strangers accompanying such forces, passing over or occupying such lands; and the amount of compensation payable to any person entitled to such compensation shall, if disputed, in each case of damage be determined as herein-after mentioned; but no person belonging to the forces shall be liable to any action, suit, indictment, or other legal proceeding in respect of any trespass committed by him upon or damage done to land situate within the limits of this Act.

5. A commission shall be formed, consisting of the Lords Lieutenant of the respective counties of Berks, Hants, and Surrey, and the members representing in this present Parliament the county of Berks, the Northern Division of the county of Hants, and the Western Division of the county of Surrey, respectively; and one of Her Majesty's Principal Secretaries of State may from time to time, by writing under his hand, add to their number, or fill up any vacancy occasioned in their number by the death, resignation, or unwillingness to act of any member of such commission. The commission shall make such

rules as to their places and times of meeting, their quorum at meetings, and their modes of procedure, as they think fit. Every question shall be decided by a majority of the votes of the members of the commission voting on that question.

The officer in command of the forces, and the said commission, in this Act called the consultative commission, shall from time to time by order authorise anything by this Act directed or permitted to be authorised, and in particular declare what enclosed lands are to be deemed to be authorised lands for the purposes of this Act, and what sources of water are to be deemed authorised sources of water. The said officer and commission may also by order make regulations with respect to the protection of cattle and sheep by securing the same in folds or farmyards, and with respect to any other matter or thing which they may deem essential for the purpose of preventing damage to property and for the more efficiently carrying into effect the purposes of this Act.

Public notice shall be given, in such manner as may be directed by the consultative commission, of any regulation made in pursuance of this Act for the protection of any cattle, sheep, or other property, and no person who neglects to comply with any regulations so made in relation to his property shall be entitled to claim compensation in respect of any damage caused to such property in consequence of his having been guilty of such neglect as aforesaid.

The consultative commission may from time to time delegate any of the powers by this Act given to them to any committee or committees consisting of two or more of their number, and any such committee or committees shall from time to time attend upon and be in communication with the officer commanding the forces, or any officer or officers deputed by him, during the time such forces are assembled in pursuance of this Act.

Any powers by this Act given to the consultative commission and the officer in command of the forces of making any order or doing any other act or thing may be exercised on behalf of the commission by any member or members of such commission to whom such powers may from time to time be delegated by the commission, and on behalf of the officer in command of the forces by any officer or officers from time to time deputed by him for the purpose; and for the purpose of facilitating the exercise of the powers conferred by this Act on such commission and officer in command, the said commission and officer shall make arrangements for securing the attendance of a sufficient number of members of the said commission at such places and

with such bodies of troops as may be agreed upon, with the view of the members so in attendance acting for the purposes of this section in conjunction with the officer in command of the forces or any officers deputed by him.

Any order made in pursuance of this Act in relation to lands or any local matter may describe such lands or matter by reference to a map or in any other convenient manner, and any order declaring what lands are to be deemed authorised enclosed lands may either describe the lands so authorised, or may declare all the lands within the limits of this Act, or within any particular area with the specified exceptions, to be authorised enclosed lands. Any order declaring what sources of water are to be deemed authorised sources of water may either describe the sources so authorised, or may declare all the sources of water within the limits of this Act or any part thereof, with the specified exceptions, to be authorised sources of water.

Any order made under this Act may be altered or amended, or a new order made in lieu thereof.

6. The following enactments shall be made with respect to compensation for damage under this Act:

- (1.) The Treasury shall appoint a fit person, in this Act called the compensation officer, whose duty it shall be, immediately the forces have ceased to occupy or pass over any part of the land within the limits of this Act, to ascertain the damage done, and, as far as practicable, to settle summarily by agreement the amount of compensation, in which case the compensation officer shall either cause the compensation to be paid at once, or shall give a writing to the person entitled, stating the amount to be paid, and the place and date at which the same will be paid, such date not being later than thirty days from the time at which such writing is given:
- (2.) The mode in which claims of compensation are to be sent to the compensation officer shall be notified within the limits of the Act in manner directed by the consultative commission. Every claim for compensation shall be sent to the compensation officer immediately after the forces have ceased to occupy or pass over the land in respect of which compensation is claimed, and at the latest within one week after the damage is done:
- (3.) Compensation may be paid to the person in actual occupation of the land in respect of which it is claimed, or, in case of his absence or inability, to his wife or some

- member of his family, or to his steward, or other person acting for him in the cultivation and management of the land, whose receipt shall be a complete discharge for the damage in respect of which the compensation is paid :
- (4.) The Treasury may, if they think fit, appoint two or more persons to be compensation officers, and each of the persons so appointed shall perform the duties and have the powers by this Act conferred on the compensation officer :
 - (5.) If the compensation officer fails to settle any claim for compensation, or is unable to decide the person to whom compensation is payable, the case shall be referred by him to the court of arbitration established under this Act, with a statement by the compensation officer of what he considers a fair compensation for the damage done :
 - (6.) A court of arbitration shall, if required, be formed, consisting of three persons, one of whom shall be named by the consultative commission, in writing under the hands of any two or more of the members of that commission, one by the Treasury, and the third by the two persons already named in writing under their hands, or, in case of their failure to agree as to such appointment within six days, by the chief justice of the Queen's Bench Division of Her Majesty's High Court of Justice :
 - (7.) Any vacancy in the office of any member of the court of arbitration occasioned by death, resignation, unwillingness to act, or otherwise, shall be filled up by the authority which appointed the vacating member in the same manner in which the vacating member was appointed :
 - (8.) There shall be paid to the members of the court of arbitration such compensation as the said Secretary of State may, with the approval of the Treasury, determine :
 - (9.) The court of arbitration shall have full power to decide all questions whatsoever, whether of law or fact, which it may be necessary to decide for the purpose of awarding compensation under this Act, and in particular to decide in any case of alleged damage to lands whether such damage was or was not caused by or in consequence of the forces, or the strangers accompanying such forces, passing over or occupying such lands, and also (if such damage was so caused) to determine the person entitled to receive compensation for such damage; and the court of arbitration shall not be subject to be restrained in the due execution of its powers by the order of any court, nor shall any proceedings before it be removed by certiorari into any court, nor shall any award by it be set aside :
 - (10.) The court of arbitration may examine witnesses on oath, and shall for that purpose have power to administer an oath, and with respect to the enforcing the attendance of witnesses, after a tender of their expenses, the examination of witnesses, and the production of books, papers, and documents, shall have all such powers, rights, and privileges as are vested in Her Majesty's High Court of Justice for such or the like purposes :
 - (11.) The court of arbitration may hold its sittings at such times and places as it thinks expedient, and the decision of any two members of that court shall be deemed to be the decision of the court :
 - (12.) The court of arbitration may appoint a valuer, and may delegate to such valuer such powers of assessing compensation under this Act as it may think fit; but an appeal may be had from his decision to the court of arbitration :
 - (13.) The court of arbitration may examine the valuer as to the amount of compensation which in his opinion ought to be paid in any case of damage brought before it, and may adopt or reject his opinion as it thinks just :
 - (14.) The court of arbitration may review and rescind or vary any order or decision previously made by it; but, save as aforesaid, every order or decision of the said court shall be final :
 - (15.) The court of arbitration shall publish in such manner as it thinks fit directions as to the mode in which applications are to be made to it under this Act :
 - (16.) The court of arbitration shall not be bound to hear any counsel or solicitor, but any person claiming compensation may appear in person or by some agent authorised by him in writing, and the court of arbitration may, in addition to compensation for damage, grant further compensation for costs reasonably incurred in substantiating a claim, or may refuse such costs wholly or partially, or reduce the amount of compensation if the person claiming refused a fair offer from the compensation officer :
 - (17.) Any person fraudulently claiming and receiving compensation to which he is not entitled shall be guilty of a fraud, and liable to be dealt with as if he had fraudulently received money under false pretences, and shall in addition be liable to pay the money received to the person entitled thereto.

Regulations as to persons not belonging to the forces, and Miscellaneous.

7. If any stranger commits any trespass upon or does any damage to any lands within the limits of this Act, he shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding forty shillings, in addition to making full compensation in money for any damage he may have caused.

Any stranger going on any lands within the limits of this Act on which the public is not entitled by law to go without the permission of the officer in command of the forces, or of some officer deputed by him, shall be deemed to have committed a trespass on such lands, and be punishable accordingly.

If any stranger, not having such permission as aforesaid, when warned not to go on any land within the limits of this Act, attempts to go thereon, or when on such land and warned to depart therefrom, refuses so to depart, he shall, in addition to any other penalty to which he may be subject, be deemed guilty of an offence against this Act, and be liable to a penalty not exceeding forty shillings. He may also be prevented by force from going on, or be removed by force from, any such lands as aforesaid.

For the purposes of this section, a warning not to go on lands or to depart from lands may be given by any sentinel or other person belonging to the forces, or by any constable, and in the case of enclosed lands every stranger not having such permission as aforesaid shall be deemed to have been warned not to go upon such lands, and be punishable accordingly.

Any constable may take possession of any horse or carriage with which any stranger is trespassing, and may remove the same from any lands on which it is found; and no compensation shall be payable in respect of any damage which may accrue to any such horse or carriage by reason of such removal, which is not caused by the wilful act or neglect of the constable removing the same.

If any person without due authority moves any flag or other mark distinguishing any lands, or obstructs or interferes with the movements of the forces, or cuts or damages any telegraph wire laid down by or for the use of the forces, he shall be guilty of an offence against this Act, and be liable to a penalty not exceeding five pounds.

If any person, without the special permission in writing of the officer in command of the forces, or of some officer deputed by him, enters on any lands for the time being directed to be kept clear, or within the lines of any encampment belonging to the forces, he shall be guilty of an offence against this Act, and

be liable to a penalty not exceeding forty shillings; and may, if he refuses to go, be removed by force from any lands on which he has so entered.

Any person charged with committing any offence against this Act may be taken into custody without warrant by any constable or person authorised by this Act to act as a constable, and may be detained until he can be brought before a special magistrate and be dealt with according to law: Provided that no person shall be detained for more than six hours under the powers of this section without being brought before a special magistrate.

Any constable or person authorised by this Act to act as a constable using force in cases in which force is by this section permitted to be used shall be indemnified from all consequences which may result from such user of force.

Any two justices of the peace belonging to the petty sessional division in which is situate any place where encampments or manœuvres are about to take place, or any special magistrate accompanying a body of troops, may, upon the requisition of the superior officer commanding any body of troops forming part of the forces, and with the consent of the owner or occupier of land over which any foot-paths or other rights of way (save turnpike roads, main roads, or carriage roads repairable at the expense of the district or parish) exist, temporarily close or divert the same; provided always, that the duration and limits of such stoppage or diversion shall be publicly declared by printed notices twelve hours previously.

The permission of the officer in command of the forces, or of some officer deputed by him, shall, for the purposes of this section, be signified by a document written or printed, or partly written and partly printed, and authenticated in such manner as may be directed by the said Secretary of State.

8. The said Secretary of State, with the consent of the authority having power to dispose of the services of any constables, may, by order under his hand, appoint such constables, or any of them, to act as constables within the limits of this Act; and every constable so appointed shall, within the limits of this Act, have all such powers, privileges, and immunities, and be liable to all such responsibilities, as any constable duly appointed has within his constableness, by virtue of the common law of the realm, or of any Act of Parliament for the time being in force.

Any person belonging to the forces may, when called upon by any constable, assist such constable in performing any duty imposed

upon him by this Act, or may, when directed by his commanding officer, act as a constable in respect of any offence against this Act; and any person so assisting or directed to act shall, during the performance of such duty, have the same powers, privileges, and immunities as a constable appointed by the said Secretary of State to act within the limits of this Act.

9. The said Secretary of State may, by order under his hand, appoint any county justice or justices, having jurisdiction within the limits of this Act, or any part of such limits, with his or their consent, to attend, for any time named in such order, the forces or any portion of such forces; and any justice so appointed, in this Act referred to as a special magistrate, shall, during the time so named, have jurisdiction, as a justice of the peace, to punish any offence against this Act, by whomsoever committed, within the limits of this Act, and any offence by any other Act punishable upon summary conviction, and committed by any stranger.

Any power by this Act given to a special magistrate may be exercised by any two or more special magistrates.

Any special magistrate may try any case in the open air, or in any other place which he may think convenient, and if the offence be committed in view of such magistrate he may punish the offender without any further evidence. An information in writing shall not be required in respect of any offence triable by any special magistrate.

Where the special magistrate determines that compensation is to be paid by any offender for any damage caused by him to lands, such magistrate shall order such compensation to be paid to the person entitled to receive such compensation, and shall, for the purpose of determining the person so entitled, and the amount of compensation payable, but subject to the appeal herein-after mentioned, have all the powers by this Act given to the court of arbitration, and the magistrate making such order shall certify the same to the compensation officer, and the amount so paid shall be taken into consideration in considering any further claim to compensation in respect of the damage so committed.

Where any person is guilty of an offence against this Act at a place where the forces, or any portion of them, are exercising or encamping, the special magistrate before whom such offence is tried may, if he thinks fit, instead of subjecting the offender to any other penalty, commit him to the custody of any constable or constables, and direct him to be detained by such constable or constables, either on the field, or at any convenient spot,

for any period not exceeding six hours; and such order of commitment shall be valid without any preliminary written proceedings, provided that the special magistrate is satisfied that the offender has been guilty of the offence in respect of which he is committed to custody.

Subject as aforesaid, any offence triable under this Act by any special magistrate shall be prosecuted, as nearly as may be, in manner directed by the Summary Jurisdiction Acts.

No order made, or warrant issued, or other act or thing done, in pursuance of this Act, by a special magistrate, shall be impeached on the ground of any defect in the jurisdiction of such magistrate, unless the objection to such jurisdiction is made at the time of the making or issue of such order or warrant, or the doing of such act or thing.

Where a special magistrate under this Act awards, by way of compensation for any damage done to lands, any sum exceeding five pounds, any person aggrieved by the decision of such magistrate may, upon giving security for costs to the satisfaction of the magistrate, appeal to the next practicable court of general or quarter sessions holden for the county in which the cause of appeal has arisen, and such court may, upon the hearing of the appeal, confirm, reverse, or modify the decision of the special magistrate, or make such other order in the matter as the court thinks just.

Offences against this Act shall be triable only by a special magistrate, but, subject as aforesaid, nothing in this section contained shall affect any jurisdiction which the justices of the county in which any offence may be committed would have had if this Act had not passed.

10. Evidence of any order or regulation made by or on behalf of the consultative commission, either alone or in conjunction with the officer in command of the forces, or any officer deputed by him, may be given in all legal proceedings whatever by the production of a copy purporting to be certified to be a true copy by any member of such commission, and notice of any order or regulation made as aforesaid may be served on any person personally or by leaving a copy of such notice at his usual place of abode.

No proof shall be required of the handwriting or official position of any person certifying in pursuance of this section to the truth of a copy of any such order or regulation.

Any order or regulation of which evidence is given in pursuance of this Act shall, until the contrary is proved, be deemed to have been duly made.

Evidence of any rule or proceeding of the

consultative commission, or of any member thereof, not including such order or regulation as aforesaid, may be given in all legal proceedings whatever by the production of a certificate under the hands of any two or more members of the commission declaring such rule to have been made, or proceeding to have taken place.

Evidence of any permission given or order made by or on behalf of the officer in command of the forces acting within the limits of the Act, or any officer deputed by him, may be given in all legal proceedings whatever by the production of a copy purporting to be certified to be a true copy by the officer in command of the forces, or any officer from time to time deputed by him to certify the same.

Definitions.

11. In this Act, if not inconsistent with the context, the following expressions have the meanings herein-after respectively assigned to them; that is to say,

The expression "forces to which this Act applies" or "the forces" means and includes all such regular troops, militia, yeomanry, volunteers, licensed sutlers, and followers in or of any of the said forces, as are for the time being assembled within the limits of this Act during the present summer for the purposes of military instruction, and are subject to military law within the meaning of the Army Act, 1881; it shall also include any police attached to the said forces or to any part of such forces, but not so as to subject such police to such military law:

The officer commanding the forces, or any officer or officers deputed by him, may from time to time grant licences to persons applying for the same authorising such persons to act as licensed sutlers in the said forces, or to be followers of the said forces, and may from time to time revoke any licences so granted:

Every holder of any licence as a sutler or follower shall be deemed to be a person subject to military law within the meaning of the Army Act, 1881, and shall be subject to such law as a soldier, unless by the terms of his licence he is entitled to be treated on the footing of an officer:

Any licences granted in pursuance of this section shall be in such form and authenticated in such manner as may be prescribed by the said Secretary of State, and

shall declare the fact that the person thereby licensed is subject to military law within the meaning of the Army Act, 1881:

The expression "strangers accompanying the forces" or "strangers" or "stranger" means all such persons or any such person as may for the time being be attending on or accompanying the forces to which this Act applies, for the purpose of trading, amusement, or any other purposes whatever, and are not or is not subject to military law within the meaning of the Army Act, 1881, but shall not include any owner or occupier of lands when on the lands owned or occupied by him:

The expression "damage to lands" includes damage to trees, underwoods, crops, animals, or other property on such lands, and also any loss or injury that may be sustained by the occupier of any such lands on account of being unable to cultivate and sow corn or other seeds on such lands during such occupation and passing over such lands; also any loss or injury sustained by any occupier from shutting up and securing his cattle or sheep in folds or farmyards; also any loss or injury sustained by any person by the damming up of any running stream, or by injury to or exhaustion of any pond or source of water, or by the use of any private or occupation roads; and "lands" includes lands covered by water.

The expression "arms, munitions of war, and stores" includes all matters and things required for the use of the forces to whom this Act applies, or any part thereof, and all animals and conveyances used for the conveyance of such matters or things; also all animals used for the food of the forces or any part thereof:

The expression "unenclosed lands" includes any unfenced or open lands:

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury.

Duration of Act.

12. This Act, in so far as it relates to the power of the forces to pass over and occupy land shall remain in force till the first of September next, and no longer, but in so far as it relates to the giving of compensation for damage caused by the passage or occupation of such forces, shall remain in force till the first of June one thousand eight hundred and eighty-three, and no longer.

SCHEDULE.

AREA FORMING LIMITS OF ACT.

For the purposes of this Act, the area therein referred to shall be deemed to be enclosed by a boundary line starting from Odiham, and running in an easterly direction along the high road by Heal and Farnham to Guildford; thence along an imaginary straight line running in a northerly direction to the point where the Staines, Wokingham, and Reading branch railway crosses the river Thames near Staines; thence along an imaginary straight line running in a westerly direction to Wokingham; thence along the high road running

between Wokingham and Reading to the point where the said high road crosses the river Loddon; thence along the said river Loddon to Sheep Bridge; thence along the high road, running through Heckfield and Hook to Skewers; thence along a road running in a southerly direction to the point where the said road crosses the Basingstoke canal; thence in an easterly direction along the said Basingstoke canal to North Warnborough; and thence along the high road to Odiham.

CHAP. 11.

Public Health (Scotland) Act Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Commencement of Act.*
3. *Repeal of 42 & 43 Vict. c. 15. Special drainage and special water supply districts may be altered, combined, &c.*

An Act to amend the Public Health (Scotland) Act, 1867.

(19th June 1882.)

WHEREAS by the Public Health (Scotland) Act, 1867, provision is made by section seventy-six for the formation of special drainage districts, and also by section eighty-nine for the formation of special water supply districts:

And whereas it has been found that a change of circumstances sometimes renders it expedient that the boundaries of such special drainage districts and special water supply districts should be altered, but the recited Act contains no provisions whereby such alteration can be effected:

And whereas the Public Health (Scotland) Act, 1867, Amendment Act, 1879, was passed for the purpose of making such provision, but it has been found insufficient for that purpose:

And whereas it is expedient that such provision should now be made, and that the provisions of the first-mentioned Act should be made applicable to the districts so altered, and that the second-mentioned Act should be repealed:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1882, and the first-mentioned Act and this Act shall be read and construed together.

2. This Act shall commence to have effect on the first day of November one thousand eight hundred and eighty-two, which date is herein-after referred to as the commencement of this Act.

3. From and after the commencement of this Act the Public Health (Scotland) Act, 1867, Amendment Act, 1879, shall be repealed, and in lieu thereof it is provided as follows:

- (1.) Where there shall exist within the district of any local authority to which the provisions of the seventy-sixth and eighty-ninth sections of the Public Health (Scotland) Act, 1867, respectively apply, a special drainage district or a special water

supply district, as the case may be, it shall be competent to such local authority, upon requisition, as herein-after provided, to meet and consider the propriety of altering the boundaries of any such special drainage or special water supply district, and to resolve upon such alteration of boundaries being effected, either (1) by enlarging or limiting the said boundaries; or (2) by combining two or more such special drainage districts or special water supply districts or portions thereof; or (3) by enlarging or limiting the said boundaries and combining two or more such special drainage districts or special water supply districts or portions thereof:

(2.) The local authority shall not be entitled to meet for the purpose of considering the propriety of any such proposed alteration of boundaries, except after receiving a requisition to that effect, made in writing and signed by at least ten of the inhabitants of the district of the local authority; but upon receiving such a requisition it shall be bound to meet for such purpose, and twenty-one clear days notice of the meeting shall be given to the members of the local authority:

(3.) In the event of the local authority resolving upon any such alteration of boundaries as aforesaid its resolution shall

be advertised, and shall be subject to appeal and review in like manner as is provided by sections seventy-six and eighty-nine of the first-mentioned Act in regard to advertising and appealing against resolutions as to the formation of special drainage districts and special water supply districts under that Act: Provided that if the sheriff or sheriff substitute, as the case may be, shall disapprove of the resolution of the local authority he may vary the same, but only with the consent of the local authority:

(4.) The whole provisions of the first-mentioned Act applicable to special drainage districts and special water supply districts shall be applicable mutatis mutandis to such districts when altered or combined or altered and combined under this Act:

(5.) The provisions of this Act shall apply to all special drainage districts and special water supply districts, whether formed before or after the commencement of this Act, or alter or combined or altered and combined under the powers conferred by this Act:

(6.) The repeal of the second-mentioned Act shall not affect anything duly done or any proceeding pending under the said Act, but such proceeding shall be carried on as if this Act had not passed.

CHAP. 12.

Militia Storehouses Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Repeal of so much of s. 3. of 17 & 18 Vict. c. 105. as directs the investment of the proceeds of the sale of militia storehouses.*
2. *Such proceeds may be applied to any purpose to which county rate applicable.*
3. *Short title.*

An Act to amend the Law relating to the application of moneys arising from the sale of Militia Storehouses.

(19th June 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. So much of section three of the Militia Law Amendment Act, 1854, as requires the residue of the purchase money arising from the sale of any place provided for keeping militia stores to be invested in the public funds, and the interest thereof applied in aid of the county rate, is hereby repealed.

2. Any moneys which have been paid to and invested by or shall hereafter be paid to the treasurer of a county on account of the proceeds of the sale of any place provided for keeping militia stores, and which moneys shall not be required for the purposes of the said Act, may be applied to any of the purposes to which money raised on the security of the county rate or stock is applicable, or the same may be invested in any security upon which trustees may by law invest trust moneys, and the interest applied in aid of the county rate or stock, as shall be directed by the justices of the county in quarter sessions assembled.

3. This Act may be cited as the Militia Storehouses Act, 1882.

CHAP. 13.

Arklow Harbour Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.**Advance of Money and Execution of Works.*

2. *Special meeting to consider as to charging baronial rates with loan.*
3. *Charge upon baronies. Payment to Wicklow Copper Mine Company. Transfer of Harbour to Board.*
4. *Authority to execute works.*
5. *Special meeting to consider as to charging town rates with expenditure in excess of estimate.*
6. *Payments by baronies.*
7. *Payments by town of Arklow.*
8. *Transfer of harbour to Harbour Commissioners.*

Constitution and Powers of Harbour Commissioners.

9. *Incorporation of Harbour Commissioners.*
10. *Appointment and election of the several Harbour Commissioners, originally and on vacancies; tenure of office.*
11. *Incorporation of parts of 10 & 11 Vict. c. 16.*
12. *Power to levy tolls, &c.*
13. *Accounts and annual report of Harbour Commissioners.*
14. *Incorporation of parts of 10 & 11 Vict. c. 27.*
15. *Abatement of work abandoned or decayed.*
16. *Lights to be exhibited during construction of works.*
17. *Survey of works by Board of Trade.*
18. *Lights to be exhibited on permanent works.*
19. *Bridge to be maintained for purposes of tramway.*
20. *Application of tolls.*
21. *Powers of Board of Works prior to transfer of harbour. Termination of powers of Treasury.*
22. *Saving rights of the Crown in the foreshore.*
23. *Saving rights of Crown under 29 & 30 Vict. c. 62.*

An Act for the Improvement of Arklow
Harbour.
(19th June 1882.)

WHEREAS by an Act of the Parliament of Ireland of the thirty-second year of the reign of George the Third, chapter twenty-four, intituled "An Act for the better enabling certain persons to open and work mines, and to raise coal, culm, minerals, and fossils in this kingdom, and to open and improve the harbour of Arklow in the county of Wicklow, and to form a canal from the said harbour of Arklow to the Meetings Bridge, and to extend the same towards the Kilkenny collieries and the Glenmalur mines," the Hibernian Mine Company were incorporated with divers powers for working mines and for opening and improving the harbour of Arklow, and for making and maintaining canals and navigation works, with power to take tolls, rates, and duties for vessels using their harbours and canals:

And whereas by an Act passed in the twenty-sixth year of the reign of Her Majesty the Queen, intituled "An Act for the Amalgamation of the Hibernian Mine Company with the Wicklow Copper Mine Company (Limited), and for other purposes;" after reciting amongst other things the said Act, and that the property of the Hibernian Company comprised the quays of the harbour of Arklow, with all the wharves and buildings thereon held in fee; and that the Hibernian Company had expended more than seventeen thousand pounds on works for the improvement of the said harbour and for making it fit for the reception of vessels and the landing and shipping of goods; and reciting that on the second day of February one thousand eight hundred and fifty-eight the Wicklow Copper Mine Company was registered under the Joint Stock Companies Act, 1856, as a Company with limited liability; and that the two Companies were desirous and it was expedient that the two Companies and their respective undertakings, property, and effects should

be amalgamated, it is enacted that on the first day of September one thousand eight hundred and sixty-three the two Companies should be thereby amalgamated into a new Company, which, by the name "the Wicklow Copper Mine Company," should be one body corporate with the powers thereby given; and that the recited Act of the Parliament of Ireland of the thirty-second year of George the Third, chapter twenty-four, relating to the Hibernian Company should be repealed, and that all the estates and property, including the harbour of Arklow, of which the two Companies respectively were seised or possessed, should be vested in the Wicklow Copper Mining Company:

And whereas one of the objects for which the Wicklow Copper Mine Company was incorporated was the maintaining, repairing, and improving of the harbour of Arklow, and the channel, embankments, piers, quays, wharves, buildings, and other works and conveniences of and connected with the harbour, and the regulating and controlling of the user of the same, and for any of those purposes; and also for the purpose of erecting sluices and other works for the improvement of the said harbour the Company may at all times use the bridge of Arklow, provided they make good any injury the bridge may sustain by their operations:

And whereas the said harbour of Arklow is an important station and place of refuge for vessels employed in prosecuting the sea fisheries on the east coast of Ireland, but the said harbour has of late years been gradually silting up, and a bar is frequently formed across the entrance thereto, whereby its value and usefulness are materially injured:

And whereas it is expedient that the said harbour should be deepened, extended, and otherwise improved, and the Wicklow Copper Mine Company, being unable to undertake the execution of the necessary works for that purpose, have agreed, in consideration of the sum of five thousand pounds, to be paid as herein-after mentioned, to transfer to the Commissioners of Public Works in Ireland (in this Act referred to as "the Board,") all their estate, interest, and property in the said harbour of Arklow, and the quays, wharves, and buildings connected therewith, as the same are delineated in red in the tracing now deposited in the office of the Board of Works in Dublin, and to which the seal of the Board has been affixed, and all their rights in the same:

And whereas it is expedient that the Board should be authorised to undertake the execution of the said works, and for that purpose to advance by way of grant the sum of fifteen

thousand pounds, being one moiety of the estimated cost thereof, and to advance by way of loan, on the security provided by this Act, the sum of twenty thousand pounds, being five thousand pounds for the price to be paid to the Wicklow Copper Mine Company, together with the other moiety of the estimated cost of the said works; and, if by reason of unforeseen circumstances the said estimated sum proves insufficient for the full completion of the works, to advance by way of further loan on the security of the rates leviable by the Town Commissioners of the town of Arklow such sum as may be necessary for that purpose:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Arklow Harbour Act, 1882.

Advance of Money and Execution of Works.

2. A special meeting shall be held in the Court House in Arklow on some day to be appointed by the Board within two months after the passing of this Act, of the justices and associated cesspayers, entitled to attend at the presentment sessions of the baronies of Arklow and Ballinacor South in the county of Wicklow, and of Gorey in the county of Wexford. Notice of such meeting shall be given once in each of two consecutive weeks before the day fixed for the same in two or more newspapers circulating in each of the counties of Wicklow and Wexford. At such meeting a person nominated by the Board shall preside, and the justices and associated cesspayers for each barony shall separately declare their opinion as to the expediency of charging the rates of the barony with the repayment of the whole or of a specified part of the said loan of twenty thousand pounds, with interest thereon, payable in the manner appearing in this Act.

If the justices and associated cesspayers of one only of the baronies declare their opinion to be in favour of such charge, they shall then proceed to declare their desire as to the period (not exceeding fifty years) within which the loan should be made repayable, having regard to the rate of interest fixed by the Treasury, by their minute dated the sixteenth day of August one thousand eight hundred and seventy-nine, for loans to which section two of the Public Works Loans Act, 1879, applies.

If the justices and associated cesspayers of more than one of the baronies declare their opinion to be in favour of such charge, they shall proceed jointly to declare their desire as to such period of repayment, having regard to the considerations aforesaid.

The chairman presiding at the meeting shall, by taking a vote in such manner as he thinks fit, ascertain and report to the Board what are the resolutions of the justices and associated cesspayers with reference to the loan.

3. If the Commissioners of Her Majesty's Treasury (in this Act referred to as the Treasury) are satisfied with the security offered by the justices and associated cesspayers of the three baronies or of any of them at such meeting, they may authorise the Board to carry this Act into effect, and to advance out of the moneys placed in their hands by Parliament the sum of fifteen thousand pounds by way of grant, and the sum of twenty thousand pounds by way of loan, and may by order declare the said baronies or some or one of them to be charged with the payment of the said sum of twenty thousand pounds, and interest. In case the justices and associated cesspayers of one only of the said baronies have agreed to charge the rates of the barony with the payment of the loan, the order shall declare that barony only to be charged. In case the justices and associated cesspayers of more than one barony have agreed to charge the rates of the baronies with the payment of specified portions of the loan, the order shall apportion the charge upon the same baronies accordingly. The barony or baronies declared by such order to be charged with any payments shall by virtue of this Act become charged with such payments accordingly.

All sums declared by the Treasury to be charged upon any barony shall be repayable within such period as the Treasury may at their discretion determine, at such rate of interest as the Treasury have fixed for loans to which section two of the Public Works Loans Act, 1879, applies; and otherwise upon the same terms and conditions as apply to loans made by the Board for purposes like to the purposes of this Act, under the Act of the session of the first and second years of the reign of King William the Fourth, chapter thirty-three, intituled, "An Act for the Extension and Promotion of Public Works in Ireland."

The Board may, upon being so authorised, out of any moneys placed in their hands by Parliament, lodge in the Bank of Ireland to the credit of the Wicklow Copper Mine Company the sum of five thousand pounds.

On such lodgment being made all the said harbour of Arklow, and the lands, piers, quays, wharves, and buildings thereof, or in any manner connected therewith (in this Act referred to as the harbour), as the same are delineated in red in the tracing now deposited in the office of the Board in Dublin, and to which the seal of the Board has been affixed (subject, however, to the reservation herein-after contained), and all rights and easements connected therewith, shall be and the same are hereby transferred to and vested in the Board of Works for the purposes herein-after mentioned; discharged from all estates, rights, titles, charges, and incumbrances whatsoever of the Wicklow Copper Mine Company, and of every other person, other than those of Her Majesty, her heirs and successors:

Provided, however, that the tramways, turntables, and weighing houses belonging to the Wicklow Copper Mine Company in connexion with the harbour, existing at the time of the passing of this Act, shall remain vested in the Company, with the exclusive right to use the same.

4. The Board may proceed with all necessary works for deepening, extending, and improving the harbour, and with such other works appertaining thereto, as they may deem fit and proper; and for that purpose, may do any matter or thing and shall have and may, if they think fit, exercise any right, power, or authority, with reference to such works which they might do, or would have if the work were undertaken by them under the provisions of the Act of the session of the ninth and tenth years of the reign of Her present Majesty, chapter three, and any Act amending the same, and may expend for that purpose, out of the moneys placed in their hands by Parliament, any sum not exceeding the sum of thirty thousand pounds.

5. If at any time before the completion of the said works the Board reports to the Treasury that it would be desirable to expend any further sum in excess of the sum of thirty thousand pounds for the completion of the works, and recommends that a loan should be offered for that purpose upon the security herein-after mentioned, and the Treasury thinks fit to sanction such loan, then a special meeting of the Town Commissioners of the town of Arklow shall be held on some day to be appointed by the Board, at which the Town Commissioners shall declare their opinion as to the expediency of charging the rates of the town with the repayment of such further loan as may be offered to be advanced by the Board for the completion of the harbour in excess of

the sum of thirty thousand pounds, or with such limited sum for the like purpose as the Town Commissioners think proper to approve.

For the assistance of the Town Commissioners, a person nominated by the Board shall be present at such meeting.

If the Town Commissioners pass a resolution in favour of such charge, the Treasury may by order declare all property in the town rateable by the Town Commissioners under the powers conferred on them by the Towns Improvement (Ireland) Act, 1854, to be charged with the payment of the whole of such further loan and interest, or with such limited sum and interest as the Town Commissioners shall, by their resolution, have approved. And such rateable property shall by virtue of this Act become charged with such payment accordingly. All sums declared by the Treasury to be charged upon the town shall be repayable within such period as the Treasury may at their discretion determine, at such rate of interest as the Treasury have fixed for loans to which section two of the Public Works Loans Act, 1879, applies; and otherwise upon the same terms and conditions as apply to loans made by the Board for purposes like to the purposes of this Act, under the Act of the session of the first and second years of the reign of King William the Fourth, chapter thirty-three, intituled, "An Act for the Extension and Promotion of Public Works in Ireland."

6. On the completion of the works, or at such other time as the Treasury may direct, the Board shall make an order declaring the sums payable by the said baronies, or some or one of them, on account of the loan referred to in this Act.

Such sums shall be raised from time to time by grand jury presentments, the first of which shall be made at the assizes next after the making of the order by the Board.

And the Board shall, before each assizes, make out a certificate for each of the counties of Wicklow and Wexford, or for one of them, as the case may be, specifying the amount then payable by any barony in such county under this Act. The Board shall transmit the certificate to the secretary of the grand jury of the county, to be laid before the grand jury, and thereupon the grand jury shall, without any previous application to presentment sessions, make a presentment for the amount specified in such certificate as payable by the barony or baronies therein specified; and in default of such presentment the amount shall be raised by an order of the judge of assize, which shall have the force of a presentment.

The amount raised in such presentment shall

be paid to the Board in such manner as the Treasury may from time to time direct.

7. In case any further loan in excess of the estimated sum of thirty thousand pounds has been advanced by the Board for the completion of the harbour, and the rateable property in the town of Arklow has been declared by the order of the Treasury to be charged with the payment of any sum on account thereof, the Board shall, on the completion of the works, or at such other time as the Treasury may direct, make an order declaring the sums payable by the town on account of such further loan. The Board shall annually, or at such intervals as they think fit, make out a certificate specifying the amount then payable by the town under this Act. The Board shall transmit the certificate to the town clerk to be laid before the Town Commissioners. The sums specified in such certificate shall be raised from time to time by the Town Commissioners, by a special rate, to be in addition to any rates which they are empowered to make under the Towns Improvement (Ireland) Act, 1854. The provisions of the said Act relative to the making and enforcement of rates, and the partial exemption of certain classes of property, shall apply to any rate made under this Act.

Every certificate of the Board under this Act shall be conclusive evidence of all facts and circumstances necessary to authorise the making of it.

8. Upon the completion of the works authorised to be constructed by the Board under this Act, or at such other time as the Treasury may direct, the Board may, with the consent of the Treasury, by order under their seal, declare that the harbour shall from a time to be named in such order be vested in the Harbour Commissioners constituted under this Act; and thereupon the harbour, and all the property connected therewith by this Act transferred to the Board shall, without any conveyance thereof, be transferred to and vested in the Harbour Commissioners, for the purposes of this Act.

Constitution and Powers of Harbour Commissioners.

9. For the purposes of this Act there shall be Harbour Commissioners, not exceeding seven in number, which Commissioners and their successors are hereby constituted a body corporate by the name of the Arklow Harbour Commissioners, and by that name shall be one body corporate, with perpetual succession and a common seal, and with power to purchase,

take, hold, and dispose of land and other property for the purposes but subject to the restrictions of this Act.

10. The appointment and election of the several Commissioners forming the Harbour Commission, and their tenure of office, shall be regulated as follows:—

- (1.) One Commissioner shall be appointed by the Treasury; one Commissioner shall be appointed by each barony upon which any charge is imposed under this Act; and three Commissioners shall be appointed by the Town Commissioners of the town of Arklow: Provided, that if only one barony becomes chargeable under this Act, that barony shall appoint two Commissioners; and in that event, and also in the event of only two baronies becoming chargeable under this Act, the number of Commissioners to be appointed by the Town Commissioners of the town of Arklow shall be reduced to two:
- (2.) The first appointment of each such Commissioner shall be made within twelve months after the passing of this Act. The appointment of a Commissioner for a barony shall be made by the justices and associated cesspayers of the barony at any ordinary presentment sessions held for that barony:
- (3.) Each vacancy in the office of any Commissioner shall be filled up by an appointment made by the same authority as appointed or was entitled to appoint the vacating Commissioner:
- (4.) Each appointment of any Commissioner shall be determinable at any time by the authority which appointed that Commissioner, and (subject thereto and to the other provisions of this Act) shall be operative for five years and thenceforth until the next ordinary meeting of the authority which appointed him; but at the end of the term of five years an outgoing Commissioner shall be capable of re-appointment:
- (5.) In case the Town Commissioners of the town of Arklow fail to make any appointment, which they are from time to time required to make in conformity with this Act, within one month after being required by the Treasury to do so, and in case the justices and associated cesspayers of any barony fail to make any such appointment at the next ordinary presentment sessions for the barony after they have been required by the Treasury, by notice addressed to the secretary of the grand jury of the county, to do so, then the Treasury, instead of the authority so

failing, shall for that turn appoint a Commissioner or Commissioners. The powers of the Commissioners shall not be dependent upon the whole number of Commissioners being at any one and the same time in office.

11. The Commissioners Clauses Act, 1847, shall be incorporated with this Act, and shall (so far as the same may be applicable and not inconsistent with any of the provisions of this Act) apply to the Harbour Commissioners (for the purposes of which Act this Act shall be deemed to be the special Act); except the clauses with respect to accounts and byelaws, and recovery of damages and penalties; and section one hundred and nine thereof shall be read as subject to the provisions of this Act expressly affecting such of the rights or things therein mentioned as are specified in this Act; and with reference to section thirty-nine, the prescribed number (forming a quorum) of the Commissioners shall be three.

12. It shall be lawful for the Harbour Commissioners to levy or cause to be levied and paid for the use of the harbour such tolls, wharfage rates, licence duties, and charges as the Treasury shall from time to time approve of.

The power vested by this section in the Harbour Commissioners shall, immediately after the passing of this Act, and until the transfer of the harbour to the Harbour Commissioners, be vested in the Board.

13. The accounts of the receipts, expenditure, credits, and liabilities of the Harbour Commissioners shall be kept and audited, and the same, or proper abstracts thereof, shall be published, in such form and manner, and at such times as the Treasury from time to time directs or approves; and a proper abstract of all such accounts, together with a report of the Harbour Commissioners on their proceedings, and on the works executed by them, and on the state of the harbour, shall be annually furnished by them to the Treasury, who shall lay the same before both Houses of Parliament.

14. The provisions of the Harbours, Docks, and Piers Clauses Act, 1847, with respect to watchhouses, boathouses, warehouses and cranes, and legal quays; and with respect to the rates to be taken by the undertakers and exemption therefrom; and with respect to the collection of rates; and with respect to harbour masters, dock masters, and pier masters; and with respect to the discharge of cargoes and removal of goods; and with respect to the protection of the harbour, dock,

and pier; and with respect to lighthouses, beacons, and buoys; and with respect to byelaws; and with respect to the recovery of damages and penalties; and also sections twelve and thirteen of the said Act as the same are amended by any Act or Acts, shall be incorporated with this Act, so far as the same may be applicable and not inconsistent with any of the provisions of this Act, and for the purpose of such incorporation this Act shall be deemed to be the special Act, and the Board until the transfer of the Harbour to the Harbour Commissioners shall be taken to mean the undertakers, and after such transfer the Harbour Commissioners shall be taken to mean the undertakers; Provided, that the rates to be fixed by the Harbour Commissioners shall be subject to the approval of the Treasury.

15. If a work constructed by the Board or the Harbour Commissioners, on, in, over, through, or across tidal lands or a tidal water is abandoned or suffered to fall into decay, the Board of Trade may abate and remove the work or any part of it, and restore the site thereof to its former condition at the expense of the Board or Harbour Commissioners, and the amount of such expense shall be a debt due from the Board or Harbour Commissioners to the Crown, and recoverable accordingly with costs, or the same may be recovered with costs as a penalty is recoverable from the Board or Harbour Commissioners.

16. The Board or the Harbour Commissioners shall on or near the works below high-water mark hereby authorised, during the whole time of the construction, altering, or extending thereof, exhibit and keep burning at their own expense every night from sunset to sunrise such lights (if any) as the Board of Trade from time to time requires or approves, and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also on or near the work when completed always maintain, exhibit, and keep burning at their own expense every night from sunset to sunrise such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves.

If the Board or the Harbour Commissioners fail to comply in any respect with the provisions of the present section, they shall for each night in which they so fail be liable to a penalty not exceeding twenty pounds.

17. If at any time the Board of Trade deems it expedient for the purposes of this Act to order a survey and examination of a work constructed by the Board or the Harbour Com-

missioners on, in, over, through, or across tidal lands or tidal water, or of the intended site of any such work, the Board or the Harbour Commissioners shall defray the expense of the survey and examination, and the amount thereof shall be a debt due from the Board or the Harbour Commissioners to the Crown and be recoverable accordingly with costs, or the same may be recovered with costs as a penalty is recoverable from the Board or the Harbour Commissioners.

18. The Harbour Commissioners shall at the outward extremity of the works of Arklow Harbour exhibit and keep burning from sunset to sunrise such light or lights (if any) as the Commissioners of Irish Lights shall from time to time require.

19. The swivel bridge on the north side of the harbour shall be maintained by the Harbour Commissioners as an opening bridge. And the Wicklow Copper Mine Company shall have a right of way over the same for the purposes of their tramways and general business, subject to any rules or byelaws of the Harbour Commissioners.

20. The tolls, rates, and charges payable under the provisions of this Act shall be applied by the Harbour Commissioners from time to time in repairing and maintaining the harbour, and the overplus thereof, if any, shall be applied for indemnifying any barony chargeable with any payment under this Act against such charge or liability and for indemnifying the town of Arklow if it becomes chargeable with any payment under this Act against such charge or liability, in such manner as may from time to time be directed by the Treasury, and subject to the aforesaid provisions shall be applied in such manner as may from time to time be directed by the Treasury.

21. All the rights and powers conferred by this Act upon the Harbour Commissioners shall, until the date of the transfer of the harbour to the Harbour Commissioners under this Act, be vested in the Board. Whenever the whole amount of the loan or loans advanced by the Board under this Act is discharged the Treasury may, if they think fit, by order transfer to any public body or person the right conferred on them by this Act to appoint a Harbour Commissioner; and upon the making of such order all the other rights and powers in relation to the harbour vested in the Treasury under this Act shall cease and determine.

22. Nothing contained in this Act shall authorise the Board or the Harbour Commis-

sioners, to take, use, or in any manner interfere with any portion of the shore or bed of the sea, or of any river, channel, creek, bay, or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty in right of Her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give); neither shall anything contained in this Act extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or

authorities vested in, or enjoyed, or exerciseable by the Queen's Majesty, her heirs or successors.

23. Nothing contained in this Act, or to be done under the authority thereof, shall in any manner affect the title to any of the subjects, or any rights, powers, or authorities, mentioned in or reserved by sections twenty-one and twenty-two of the Crown Lands Act, 1866, and belonging to or exerciseable on behalf of Her Majesty, her heirs or successors.

CHAP. 14.

Metropolis Management and Building Acts (Amendment) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

1. *Short title.*
2. *Limit of Act.*
3. *Division of Act into four parts.*

PART II.

4. *Metropolis Management Acts and Part II. of Act to be construed as one Act.*
5. *Power to Board to name and number streets in default of vestries, &c. in complying with order of Board.*
6. *Preventing obstructions of streets.*
7. *Provisions as to new streets.*
8. *Provisions restricting in certain cases the laying out of streets for foot traffic only.*
9. *Board may annex and enforce conditions as to space to be left open where building is erected beyond the general or regular line of building.*
10. *Power to Board to exercise powers of vestries and district boards under s. 75 of 25 & 26 Vict. c. 102 with respect to buildings, &c. erected beyond general line of buildings.*

PART III.

11. *The Metropolitan Building Act and Part III. of Act to be construed as one Act.*
12. *Board may impose condition requiring removal of iron or other buildings of a temporary character within certain period.*
13. *Temporary or movable wooden structures or erections not to be erected without license of Board.*
14. *As to open spaces to dwellings.*
15. *Conversion of houses, &c. into public buildings.*
16. *Amendment of provisions of 18 & 19 Vict. c. 122. s. 21 with respect to hot water pipes.*
17. *Dilapidated and neglected buildings.*
18. *Provisions for better securing payments to Board of expenses incurred by Board in respect of dangerous or neglected structures.*
19. *As to summonses and notices in the cases of dangerous or neglected structures.*
20. *Proceedings as to irregular buildings, &c.*
21. *Provisions as to settlement of differences between building and adjoining owners.*

PART IV.

22. *Recovery of penalties.*

23. *Exceptions from Metropolis Management Acts extended to this Act.*

24. *Exceptions from Metropolitan Building Acts extended to this Act.*

25. *Act not to apply to the Inner and Middle Temple, &c.*

26. *Ss. 6, 7, 8, and 13 not to apply to city of London.*

27. *Expenses of Act.*

An Act to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis. (19th June 1882.)

WHEREAS it is expedient to provide for the better management of the metropolis by conferring further powers upon the Metropolitan Board of Works (in this Act referred to as "the Board") with respect to the management of existing streets and the formation of new streets, and the regulation of buildings and structures in the metropolis :

And whereas for the purposes aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively :

And whereas the objects aforesaid cannot be effected without the authority of Parliament :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

1. This Act may be cited for all purposes as the Metropolis Management and Building Acts (Amendment) Act, 1882.

2. This Act shall extend and apply to the metropolis as defined by the Metropolis Management Act, 1855.

3. This Act shall consist of four parts.

PART II.

4. The Metropolis Management Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act.

5. Whenever the Board have transmitted a copy of any order made by them in pursuance of the provisions of the eighty-seventh section of the Metropolis Management Amendment Act, 1862, to any vestry or district board, or

to the Commissioners of Sewers of the City of London, and such vestry or district board or commissioners have for the space of three calendar months after the receipt of such order failed to perform all or any of the necessary acts or to take all or any of the requisite proceedings for carrying such order into execution, then and in every such case the Board may perform all or any of such necessary acts or take all or any of such necessary proceedings which such vestry or district board or commissioners have failed to perform or take, and for such purpose, and generally for giving effect to the provisions of the said section, as amended by this section, the Board shall have and may exercise all the rights, powers, authorities, and jurisdiction by the said section conferred upon vestries, district boards, and the said commissioners respectively, including the recovery of expenses from owners of houses and buildings, and the said section shall be construed accordingly.

6. In case any person not being lawfully authorised knowingly erects or places, or causes to be erected or placed, any post, rail, fence, bar, obstruction, or encroachment whatsoever in, upon, over, or under any street, or alters or interferes with any street in such a manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same, he shall (in addition to any other proceeding to which he may be liable therefor) be liable to a penalty not exceeding ten pounds for every such offence, and to a further penalty not exceeding forty shillings for every day on which such offence is continued after the day on which he shall have received notice in writing from the Board to remove such post, rail, fence, bar, obstruction, or encroachment, and to reinstate or restore such street to its former condition; and the Board may, at the expiration of two days after giving such notice as aforesaid, demolish or remove any such post, rail, fence, bar, obstruction, or encroachment, and reinstate or restore such street to its former condition, and recover the expenses thereof in like manner as if the same were a penalty imposed by this part of this Act.

7. Where after the passing of this Act it is

intended by any person to form or lay out any road, passage, or way for building as a street for the purposes of carriage traffic or of foot traffic only, in such manner that such road, passage, or way will not afford direct communication between two streets, such person shall, at least three months before such road, passage, or way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the proposed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out in manner aforesaid, or that such road, passage, or way should be formed or laid out in manner aforesaid subject to any conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the formation or laying out of such road, passage, or way in manner aforesaid, or may sanction the formation or laying out of such road, passage, or way in manner aforesaid subject to such conditions as they may prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street in manner aforesaid where the Board have declined their sanction, or shall not be formed or laid out for building as a street in manner aforesaid, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any road, passage, or way so formed or laid out in manner aforesaid contrary to the provisions of this section shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which the offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

8. Where after the passing of this Act it is intended by any person to form or lay out any road, passage, or way for building as a street for foot traffic only, such person shall, at least three months before such road, passage, or

way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the proposed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out for foot traffic only, or that such road, passage, or way should be formed or laid out for foot traffic only subject to any conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the forming or laying out of the same for foot traffic only, or may sanction the formation or laying out of such road, passage, or way for foot traffic only subject to such conditions as they may think proper to prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street for foot traffic only where the Board have declined their sanction, or shall not be formed or laid out for building as a street for foot traffic only, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any such road, passage, or way for foot traffic only contrary to the provisions of this section shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which such offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

9. Where the Board consent, in writing, under section seventy-five of the Metropolis Management Amendment Act, 1862, to the erection by any person of a building or part of a building or erection in any street, place, or row of houses beyond the general or regular line of buildings in such street, place, or row of houses, the Board may annex to such consent, if they think fit, any conditions they may think proper as to the amount of land in front of such building, part of a building, or erection which shall be dedicated to or left open for the use of the public; and where

the Board have annexed to such consent to the erection of such building, part of a building, or erection any such condition, then and in every such case such condition shall within three months after the erection of such building, part of a building, or erection be fulfilled, and if such person fails to fulfil such condition within such period as aforesaid he shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day upon which such condition continues to be unfulfilled after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty under this section, the Board, at any time after default in the fulfilling of any such condition, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring the owner or occupier of such building, part of a building, or erection, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner or occupier directing the demolition of such building, part of a building, or erection, or so much thereof as may be beyond such general or regular line, within such time as such justice shall consider reasonable, and shall also make an order for the costs incurred up to the time of the hearing; and in default of the building, part of a building, or erection complained of being demolished, within the time limited by such order, the Board may forthwith enter the premises to which the order relates and demolish the building, part of a building, or erection complained of, and do whatever may be necessary to execute such order, and may also remove the materials of which the same was composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred by the Board in executing such order and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance, if any, shall be paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from such owner or occupier, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this Act.

10. The powers conferred by the seventy-fifth section of the Metropolis Management Amendment Act, 1862, upon the vestry of any parish and the board of works of any district with respect to any building or erection situate in such parish or district in case such building or erection has been erected, or begun to be erected or raised, beyond the general line of buildings in the street, place, or row of houses in which the same is situate without the consent in writing of the board, or contrary to the terms and conditions on which such consent may have been granted (including the powers for the recovery of expenses), shall extend and apply to and may be exercised by the Board in like manner as by such vestry or board of works.

PART III.

11. The Metropolitan Building Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act.

12. Whenever an application is made to the Board by any person stating his desire to erect in any place any iron or other building of a temporary character to which the rules of the Metropolitan Building Act, 1855, and the Acts amending the same, are inapplicable, the Board may, in case of their approval of the plan and particulars of such building, limit the period during which such building shall be allowed to remain in such place, and may make such approval subject to such conditions as to the removal of such building or otherwise as they may think fit; and if at the expiration of the period limited by the Board during which such building is allowed to remain in such place such building is not removed in accordance with such conditions, the Board may, by notice in writing, require the occupier or owner of such building to remove such building within a reasonable time, to be specified in such notice, and in case such occupier or owner fails to comply with the requirements of such notice within such time as aforesaid he shall be liable to a penalty not exceeding five pounds for such default, and to a further penalty not exceeding forty shillings for every day on which such default continues after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty, the Board may, at any time after default in complying with the requirements of such notice, if they think proper, cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier or owner to appear, at a time

and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order, in writing, authorising the Board to enter upon the land upon which such building is situated, and to remove or take down the same, and do whatever may be necessary for such purpose, and also to remove the materials of which the same is composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred in respect of any such order, and of entering and removing or taking down any such building, and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the occupier or owner of such building, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this Act.

13. It shall not be lawful for any person to erect or set up in any place any wooden structure or erection of a movable or temporary character (unless the same be exempt from the operation of the first part of the Metropolitan Building Act, 1855,) without a license in writing first had and obtained from the Board for the erection or setting up of such structure or erection in such place, and every such license may contain such conditions with respect to such structure or erection and the time for which it is to be permitted to continue in such place as the Board may think expedient, and if any person erects or sets up any such structure or erection in any place without having had and obtained such license to erect or set up the same in such place, or makes default in observing any of the conditions contained in such license, or is guilty of any breach of such conditions, he shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day on which any such structure or erection continues erected or set up, without such license being had and obtained, or upon which such default or breach continues after the day on which the first penalty is incurred.

Provided always, that a license shall not be

required in the case of any wooden structure or erection of a movable or temporary character erected by a builder for use during the construction, alteration, or repair of any building, unless the same is not taken down or removed immediately after such construction, alteration, or repair.

14. Every new building begun to be erected upon a site not previously occupied in whole or in part by a building, after the passing of this Act, intended to be used wholly or in part as a dwelling-house shall, unless the Board otherwise permit, have directly attached thereto and in the rear thereof an open space exclusively belonging thereto of the following extent:

Where such building has a frontage not exceeding 15 feet the extent of the open space shall be 150 square feet at the least;

Where such building has a frontage exceeding 15 feet, but not exceeding 20 feet, the extent of the open space shall be 200 square feet at the least;

Where such building has a frontage exceeding 20 feet, and not exceeding 30 feet, the extent of the open space shall be 300 square feet at the least; and

Where such building has a frontage exceeding 30 feet the extent of the open space shall be 450 square feet at the least.

Every such open space shall be free from any erection thereon above the level of the ceiling of the ground floor storey, and shall extend throughout the entire width (exclusive of party or external walls) of such building at the rear thereof.

The provisions of this enactment shall be in addition to and shall form part of the rules of the Metropolitan Building Act, 1855, and the said Act shall be construed accordingly.

15. Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building within the meaning of the Metropolitan Building Act, 1855, and the Acts amending the same, such conversion or alteration, and the public building thereby formed, including the walls, roofs, floors, galleries, and staircases of the same, shall be carried into effect and constructed respectively in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the Board, and the provisions of the Metropolitan Building Act, 1855, and of the Acts amending the same, with respect or applicable to the construction of public buildings shall extend and apply to such alteration or conversion as

though such alteration or conversion were the construction of a public building.

16. From and after the passing of this Act the restrictions imposed by the twenty-first section of the Metropolitan Building Act, 1855, with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of pipes for conveying hot water or steam at low pressure.

17. Where a building or structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in or the inhabitants of the neighbourhood, the Board may make complaint thereof to a justice of the peace, who shall thereupon issue a summons requiring the owner and occupier of such building or structure, herein-after referred to as a "neglected structure," to appear, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may, if he sees good cause, order the owner or, on his default, the occupier to take down or repair or rebuild the neglected structure or any part thereof, or to fence in the ground upon which the same stands, or any part thereof, or otherwise to put the same or any part thereof into a state of repair and good condition, to the satisfaction of the Board, within a reasonable time to be fixed by the order, and may also make an order for the costs incurred up to the time of the hearing.

If the order is not obeyed the Board may, with all convenient speed, enter upon the neglected structure or such ground as aforesaid and execute the order.

Where the order directs the taking down of a neglected structure or any part thereof, the Board, in executing the order, may remove the materials to a convenient place and (unless the expenses of the Board under this section in relation to such structure be paid to them within fourteen days after such removal) sell the same as they think fit.

All expenses incurred by the Board under this section in relation to a neglected structure may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto, and in case such neglected structure or some part thereof is not taken down, and such materials are not sold by the Board, or in case the proceeds of the

sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the owner of such neglected structure, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this Act, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

18. Where under the provisions of the Metropolitan Building Act, 1855, and the Acts amending the same, with respect to dangerous structures, or under the provisions of this Act with respect to neglected structures, the Board have incurred any expenses in respect of any dangerous structure or any neglected structure, and have not been paid or have not recovered the same, the Board may, after giving notice of their intention to do so, in manner herein-after mentioned, to the owner of such dangerous or neglected structure, apply to a justice of the peace, at the time and place named in such notice, for an order fixing the amount of such expenses and the costs of such application, and directing that no part of the land upon which such dangerous or neglected structure stands or stood shall be built upon, or that no part of such neglected structure, if repaired or rebuilt, shall be let for occupation until after payment to the Board of the amount of such expenses and costs as fixed by such order; and such justice, on proof of such expenses having been incurred by the Board, and after hearing the parties appearing before him, may make such order as aforesaid, and thereupon and until payment to the Board of the amount fixed by such order no part of such land shall be built upon, and no part of such neglected structure so repaired or rebuilt shall be let for occupation.

Every such order shall be signed in duplicate by such justice, and one of such orders shall be retained by the officer of the Court in which such justice made the same and the other of such orders shall be kept at the office of the Board.

The Board shall keep at their principal office a register of all such orders as may from time to time be made under the authority of this section, and shall keep the same open for inspection by all persons at all reasonable times, and any such order not entered in such register within ten days after the making of the same shall cease to be of any force or effect.

A notice of the intention to make an application for any such order may be printed or written, or partly printed and partly written.

19. Any summons or notice under this Act with respect to a dangerous or neglected structure shall be served or given in accordance with the provisions of section ninety-eight of the Metropolitan Building Act, 1855: Provided always, that where the owner of any such dangerous or neglected structure is not known to or cannot be found by the Board or their officers, any such summons or notice shall be deemed to be duly served or given if a copy of the same be posted in a conspicuous place on such dangerous structure or neglected structure, or on the land whereon it stands or stood, at least two months before the time named in such summons or notice for the hearing of such complaint or for the making of such application.

20. Proceedings with respect to any irregular building or structure shall not be prejudiced or affected by the removal or falling in of the roof of such building or structure.

21. Where in any case not specially provided for by the Metropolitan Building Act, 1855, a difference has arisen between a building owner and an adjoining owner in respect of any matter arising under the said Act, and both parties have concurred in the appointment of one surveyor for the settlement of such difference in manner prescribed by section eighty-five of the Metropolitan Building Act, 1855, then and in every such case, if such surveyor refuses or for seven days neglects to act, or dies, or becomes incapable to act before he has made his award, the matters in dispute shall be determined, under the provisions of the said section, in the same manner as if such single surveyor had not been appointed.

When any such difference as aforesaid has arisen and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, and a third surveyor has been selected, then and in every such case, if such third surveyor refuses or for seven days neglects to act, or before such difference is settled dies or becomes incapable to act, the two surveyors shall forthwith, after such refusal, neglect, death, or incapacity, select another third surveyor in his place, and every third surveyor so to be selected as aforesaid shall have the same powers and authorities as were vested in the third surveyor at the time of such his refusal, neglect, death, or incapacity as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then, if the two surveyors so appointed refuse or for seven days after request of either party neglect to select a

third surveyor or another third surveyor in the event of the refusal or neglect to act, death, or incapacity of the third surveyor for the time being, one of Her Majesty's Principal Secretaries of State may, on the application of either party, select some fit person to act as third surveyor, and every surveyor so selected as aforesaid shall have the same powers and authorities as if he had been selected as a third surveyor by the two surveyors so appointed by the parties.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if before such difference is settled any such surveyor so appointed as aforesaid by either party dies or becomes incapable to act, the party by whom such surveyor was appointed may appoint in writing some other surveyor to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other surveyor may proceed *ex parte*, and the decision of such remaining or other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred, and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of such his death or disability as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if either of the surveyors refuses or for seven days neglects to act, the other surveyor may proceed *ex parte*, and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

PART IV.

22. Every penalty imposed by Part II. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Management Act, 1855, and the Acts amending the same; and every penalty imposed by Part III. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855,

and the Acts amending the same: Provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act, or of any byelaw made in pursuance of this Act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

23. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolis Management Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all special exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

24. Her Majesty's royal palaces, and all buildings, works, and ground excepted from

the operation of the Metropolitan Building Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all special exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

25. Nothing in this Act shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

26. The provisions of sections six, seven, eight, and thirteen of this Act shall not apply to the city of London and the liberties thereof.

27. All the costs, charges, and expenses of and incident to the applying for, obtaining, and passing of this Act shall be paid by the Board.

CHAP. 15.

Commonable Rights Compensation Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of compensation money for common lands.*
3. *Application of compensation money for recreation grounds and field gardens.*
4. *Provision for cases where money paid by way of compensation has already been applied in the manner authorised by this Act.*
5. *Deposit of orders.*
6. *Exception of the New Forest.*

SCHEDULE.

An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common.
(19th June 1882.)

WHEREAS under the provisions of the Lands Clauses Consolidation Act, 1845, and of railway and other special Acts of Parliament, money is directed or authorised to be paid to a committee as compensation for the extinction of commonable rights or for lands, being common lands or in the nature thereof, the right to the soil of which belongs to the commoners:

And by the Lands Clauses Consolidation Act, 1845, and by the Inclosure Act, 1852, and the Inclosure Act, 1854, certain powers of apportioning and otherwise dealing with such money are conferred upon any such committee and upon the Inclosure Commissioners for England and Wales (herein-after called the Commissioners), but such powers are found in practice to be insufficient, and money paid by way of compensation as aforesaid is often in consequence useless to the persons interested therein:

And whereas it is expedient to give such powers of dealing with such compensation money as are herein-after specified, but such powers cannot be conferred without the sanction of Parliament:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Commonable Rights Compensation Act, 1882.

2. (1.) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act and any Act incorporated therewith, or of any other Act of Parliament to a committee of commoners as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the Commissioners to call a meeting of the persons interested in such money to consider the application thereof, and the Commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways:

- (a.) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid;
- (b.) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a Provisional Order for the regulation, of such common land, or of any application to Parliament for a Private Bill or otherwise for the preservation and management of such common land as an open space;
- (c.) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same;
- (d.) In the purchase of additional land to be used as common land;
- (e.) In the purchase of land to be used as a recreation ground for the neighbourhood; and any such resolution shall bind the minority and all absent parties, and the Commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to

such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons, or the legal personal representative of such survivor, shall, upon service of any such order of the Commissioners as aforesaid upon them or any of them or any person on their behalf as the Commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2.) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the Commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said Commissioners by such majorities as aforesaid.

(3.) Every appointment of a new trustee or of new trustees, in pursuance of this Act, shall be subject to confirmation by the Commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly appointed trustees without any conveyance.

(4.) The Commissioners shall publish such notice of any meeting held under this Act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this Act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5.) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this Act for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any Act incorporated therewith, or of any other Act of Parliament, to any local authority as specified in the schedule to this Act, or to the churchwardens and overseers of a

parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such Act or Acts of Parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this Act, been applied in any one or more of the ways authorised by this Act, a resolution may be passed, at any meeting of the persons interested, called by the Commissioners in manner provided by this Act, by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the Commissioners under their seal, be deemed to have been lawfully made under the provisions of

this Act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this Act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this Act, been laid out in the purchase of land.

5. Copies of all orders made by the Commissioners under this Act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept.

6. This Act shall not extend to the New Forest.

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SCHEDULE.

Situation of Land.	Local Authority.
Within the Metropolis - - - - -	The Metropolitan Board of Works.
Not within the Metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any Act amending the same.	The urban sanitary authority.
Elsewhere than within the Metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

CHAP. 16.

Irish Reproductive Loan Fund Act (1874) Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Repeal of clauses 2 and 3 of s. 5. of 37 & 38 Vict. c. 86.*
3. *Lord Lieutenant in Council may make rules for supply of boats and gear to borrowers in lieu of money.*
4. *Recovery of loans. Summary powers.*
5. *Certificate of amount due.*
6. *Two Acts to be construed as one Act.*

An Act to amend the Irish Reproductive
Loan Fund Act, 1874.

(19th June 1882.)

WHEREAS under the provisions of an Act of Parliament passed in the session of the thirty-seventh and thirty-eighth years of the reign of Her present Majesty, chapter eighty-six, intituled "The Irish Reproductive Loan Fund Act, 1874," loans have been made for fishing purposes which have proved to be of great public utility and of important benefit to the poorer classes of fishermen in certain counties in Ireland; and it is expedient for the still further encouragement and promotion of the Fisheries that the provisions of said Act should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Irish Reproductive Loan Fund Amendment Act, 1882.

2. The second and third clauses of the fifth section of the Act thirty-seventh and thirty-eighth Victoria, chapter eighty-six, which limit the amount of loans to be made in any one year to a certain proportion of the fund standing to the credit of the county in which such loans are made, are hereby repealed; and it shall be lawful for the Commissioners, under the said Act, to advance, by way of loan, such amount, not exceeding in the whole the amount standing to the credit of each county in any year, as the Inspectors of Irish Fisheries may from time to time recommend, subject to the provisions of the said Act and the rules made thereunder by the Lord Lieutenant in Council.

3. In addition to any rules heretofore made the Lord Lieutenant in Council may make such further rules as may seem expedient to enable the Inspectors of Irish Fisheries to supply, in cases where they may deem it expedient, to persons obtaining loans under the said Act and this Act, boats or fishing-gear in lieu of money; and on the certificate of the

Inspectors that such boats and gear have been supplied the Commissioners may pay for such boats and gear instead of paying the money to the borrowers, which shall be as effectually binding on the borrowers, so far as the liabilities or securities they may have entered into with the Commissioners shall extend, as if such borrowers had received the actual value of such securities in money instead of boats and gear.

4. All moneys of whatever amount, and at whatever time they may have accrued, due to the Commissioners on account of loans made by them under the said recited Act or this Act, including any costs and charges in respect of such loans or the recovery thereof, may be recovered before the justices in petty sessions, in the manner prescribed by the Act of the twenty-second year of the reign of Her present Majesty, chapter fourteen, and any Acts amending it.

The power given by this section shall be deemed to be in addition to and not in derogation of any other powers to which the Commissioners may be entitled at common law or in equity of recovering any moneys due to them, and the Commissioners may use any such powers accordingly.

5. A certificate, purporting to be under the seal of the Commissioners and to be signed by one of them, stating the amount due to the Commissioners from any person in respect of any loan made to him under the said recited Act or this Act, together with interest thereon, and any costs and charges in respect of such loans or the recovery thereof, shall, until the contrary is proved, be evidence of the amount due and of the liability of the party therein named to pay the same; and it shall be sufficient, notwithstanding any rule, order, or form of procedure in any court whatsoever, if such certificate be produced to the court before which proceedings are instituted for the recovery of any such sum by any person delegated by the said Commissioners, or any one of them, to produce such certificate.

6. This Act and the said recited Act may be read and construed as one Act.

CHAP. 17.

Customs and Inland Revenue Buildings (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Lands, &c. held for the service of the Customs to vest in the Board of Works.*
3. *As to completion of existing contracts.*
4. *Board of Works empowered to purchase lands.*
5. *Incorporation of 8 & 9 Vict. c. 18., 23 & 24 Vict. c. 106., 14 & 15 Vict. c. 70., 23 & 24 Vict. c. 97., 27 & 28 Vict. c. 71., 31 & 32 Vict. c. 70.*
6. *Power to sell and let lands.*

An Act for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto.

(3rd July 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Customs and Inland Revenue Buildings (Ireland) Act, 1882.

2. All lands and hereditaments in Ireland which are at the time of the passing of this Act vested in the secretary to the Commissioners of Her Majesty's Customs, (in this Act called the Commissioners of Customs,) or any other person in trust for the Commissioners or for the use and service of Her Majesty's Customs, and also all lands and hereditaments in Ireland which are at the time of the passing of this Act vested in the Commissioners of Her Majesty's Works and Public Buildings for the use and service of the Inland Revenue, shall become and are hereby vested in the Commissioners of Public Works in Ireland (herein-after called the Commissioners of Public Works), for the public service, and shall be subject to the provisions of the Act of the session held in the thirty-second and thirty-third years of the reign of Her present Majesty, chapter seventy-four, in all respects as if the same had been acquired under the provisions of that Act.

3. All contracts entered into by or on behalf of the Commissioners of Customs in respect of any lands or hereditaments in Ireland for the use and service of the Customs, and not at the

time of the passing of this Act fully performed and completed, and also all contracts entered into by or on behalf of the Commissioners of Her Majesty's Works and Public Buildings in respect of any lands or hereditaments in Ireland for the use and service of the Inland Revenue, and not at the time of the passing of this Act fully performed and completed, may be enforced and shall be performed and completed for the public service in like manner as if the Commissioners of Public Works had been parties thereto instead of the Commissioners of Customs, or the Commissioners of Her Majesty's Works and Public Buildings, as the case may be.

4. The Commissioners of Public Works shall, under and subject to the provisions of the Act of the session of the thirty-second and thirty-third years of the reign of Her present Majesty, chapter seventy-four, and under the direction of the Commissioners of the Treasury, from time to time purchase, hire, or otherwise acquire such lands or hereditaments as may be necessary for the service of Her Majesty's Customs in Ireland, or for the service of the Inland Revenue in Ireland; and for the purpose of any such purchase the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, except so much thereof as relates to the purchase of land otherwise than by agreement, are hereby incorporated with this Act, the special Act being construed to mean this Act, and the promoters of the undertaking being construed to mean the Commissioners of Public Works.

5. Whenever the Commissioners of the Treasury have exercised, with reference to lands or hereditaments in Ireland, the power conferred on them by the three hundred and thirty-fifth section of the Customs Consolidation Act, 1853, the purchase or acquisition of such lands or hereditaments shall, instead of being carried into effect in the manner prescribed by the said Act, as amended by the Customs Con-

consolidation Act, 1876, and the Customs Buildings Act, 1879, be carried into effect in the manner prescribed by the Lands Clauses Consolidation (Ireland) Acts, 1845 to 1868; and for that purpose the Customs Consolidation Act, 1853, shall be deemed to be the special Act; and the "Promoters of the undertaking," "Railway," and "Company," shall be construed to mean the Commissioners of Public Works.

In this section the term "Lands Clauses Consolidation (Ireland) Acts, 1845 to 1868," means the Lands Clauses Consolidation Act, 1845, as the same is amended by the Lands Clauses Consolidation Acts Amendment Act, 1860; the Railways Act (Ireland), 1851; the Railways Act (Ireland), 1860; the Railways Act (Ireland), 1864; and the Railways Traverse Act.

6. The Commissioners of Public Works may

from time to time, under the direction of the Commissioners of the Treasury, sell, exchange, demise, or in any manner dispose of any lands or hereditaments vested in or acquired by them under the provisions of this Act; and, in the case of sales or exchanges of lands or hereditaments held for the use and service of the Customs, the two hundred and seventy-fifth section of the Customs Consolidation Act, 1876, shall apply to such sales or exchanges, with this modification, that the moneys therein referred to shall be paid to the Commissioners of Public Works instead of to the Commissioners of Customs, and that the receipt of the Commissioners of Public Works (endorsed on the conveyance, surrender, or assignment), shall effectually discharge the purchaser or person by whom or on whose account the same shall be paid.

CHAP. 18.

Public Schools (Scotland) Teachers Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definition.*
3. *Three weeks notice to be given to members of School Boards and teacher of motion for dismissal. Adoption of resolution for dismissal.*
4. *Suspension.*

An Act to regulate the procedure of School Boards in Scotland in the dismissal of Teachers.

(3rd July 1882.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Schools (Scotland) Teachers Act, 1882.

2. In this Act "certificated teacher" shall mean a teacher holding or who is deemed to hold a certificate of competency within the meaning of the Education (Scotland) Act, 1872.

3. In order to secure that no certificated teacher appointed by and holding office under a School Board in Scotland shall be dismissed

from such office without due notice to the teacher and due deliberation on the part of the School Board, the following provisions shall from and after the passing of this Act have effect; (that is to say.)

(1.) No resolution of a School Board for the dismissal of a certificated teacher shall be valid unless adopted at a meeting called not less than three weeks previously by circular sent to each member intimating that such dismissal is to be considered, and unless notice of the motion for his dismissal shall have been sent to the teacher not less than three weeks previous to the meeting. Such circulars shall be held to have been delivered to the members of the School Board if sent by the clerk by post addressed to the usual or last known place of abode of each member, and such notice to the teacher shall be held to have been delivered if sent by the clerk by post in a registered letter addressed to the usual or last known place of abode of such teacher.

(2.) No resolution of a School Board for the

dismissal of a certificated teacher shall be valid unless agreed to by a majority of the full number of members of such School Board.

4. Notwithstanding anything contained in this Act, it shall be lawful for a School Board summarily to suspend any teacher from the

exercise of his duties; but such suspension shall not affect the teacher's right to the salary or other emoluments attached to his office, and nothing contained in this Act shall affect the rights of teachers appointed before the passing of the Education (Scotland) Act, 1872, in so far as the same are saved by that Act.

CHAP. 19.

Interments (felo de se) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Repeal of 4 Geo. 4. c. 52.*
2. *Coroner to give directions for interment.*
3. *Interment.*
4. *Rites of Christian burial not to be performed on interment.*
5. *Extent of Act.*
6. *Short title.*

An Act to amend the law relating to the interment of any person found felo de se. (3rd July 1882.)

WHEREAS it is expedient that the laws and usages relating to the interment of the remains of persons against whom a finding of felo de se shall be had should be further altered and amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Act of the fourth year of George the Fourth, chapter fifty-two, intituled "An Act to alter and amend the law relating to the interment of the remains of any person found felo de se," shall be and the same is hereby repealed.

2. From and after the passing of this Act it shall not be lawful for any coroner or other officer having authority to hold inquests to issue any warrant or other process directing the interment of the remains of persons against whom a finding of felo de se shall be had in

any public highway, or with any stake being driven through the body of such person, but such coroner or other officer shall give directions for the interment of the remains of such person felo de se in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of felo de se had not been found against such person.

3. The interment of any such person as aforesaid may be made in any of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880.

4. Save as aforesaid, nothing herein contained shall authorise the performing of any of the rites of Christian burial on the interment of the remains of any such person as aforesaid, or be taken to alter the laws or usages relating to the burial of such persons.

5. This Act shall extend to the Channel Islands, but shall not apply to Scotland or to Ireland.

6. This Act may be cited as the Interments (felo de se) Act, 1882.

CHAP. 20.

Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation.*
3. *Payment of rates by outgoing occupier to be proportionate to time of occupation.*
4. *Publication of rate where no parish church.*

An Act to amend the Poor Rate Assessment and Collection Act, 1869.
(3rd July 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be called the Poor Rate Assessment and Collection Act, 1869, Amendment Act, 1882.

2. This Act and the Poor Rate Assessment and Collection Act, 1869, as amended, shall be read as one Act.

3. The provisions of the sixteenth section of

the Poor Rate Assessment and Collection Act, 1869, so far as regards the payment of rates by an outgoing occupier, shall extend and apply to any outgoing occupier assessed in the rate, and such outgoing occupier shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant.

4. In a parish in which there is no church or chapel of the parish, a poor rate, whether made before or after the passing of this Act, shall be deemed to have been duly published if, within fourteen days after the making of the rate, notice thereof has been given by affixing such notice in some public and conspicuous place or situation in the parish.

CHAP. 21.

Places of Worship Sites Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Conveyance of lands by corporations and other public bodies.*
2. *Power for limited owner in case of unborn or unascertained remainderman to convey, &c.*
3. *Short title.*

An Act to amend the Places of Worship Sites Act, 1873. (12th July 1882.)

WHEREAS by the Places of Worship Sites Act, 1873, facilities are afforded for the conveyance of pieces of land not exceeding in quantity one acre for sites for places of religious worship and for burial places, but doubts have been entertained whether conveyances can be made under that Act by corporations and public bodies, and it is expedient to remove such doubts:

And whereas cases have arisen in which tenants for life are unable to make convey-

ances under the said Act by reason that the person next entitled to the manor or lands for a beneficial interest in fee simple or fee tail is unborn or unascertained; and it is expedient to grant increased facilities for making such conveyances:

BE it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Places of Worship Sites Act, 1873,

shall be construed as extending to authorise any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, convey, or enfranchise for the purposes of the Act such quantity of land as therein mentioned: Provided as follows:

- (a.) An ecclesiastical corporation sole, being below the dignity of a Bishop, shall not make any such grant without the consent in writing of the Bishop of the diocese to whose jurisdiction he is subject:
- (b.) A municipal corporation shall not make any such grant without the consent in writing of the Commissioners of Her Majesty's Treasury:
- (c.) Parochial property shall not be so granted without the consent of a majority of the ratepayers and owners of property in the parish to which the property belongs, assembled at a meeting to be convened according to the mode pointed out in the Act of the session held in the fifth and sixth years of the reign of King William the Fourth, chapter 69, intituled "An Act to facilitate the conveyance of work-houses and other property of parishes, and of incorporations or unions of parishes in England and Wales," and of the Local Government Board and of the guardians of the poor of the parish or of the union comprising the parish, testified by their being parties to the conveyance:

(d.) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

2. The said Act shall be construed as extending to authorise any person seised or entitled only for life or lives of or to any manor or lands of freehold tenure to make such grant, conveyance, or enfranchisement as is mentioned in the said Act in cases where the person next entitled to the same for a beneficial interest in remainder in fee simple or fee tail is unborn or unascertained: Provided that no such grant, conveyance, or enfranchisement made by any such person seised only for a life or lives shall be valid unless the person seised or entitled for a beneficial interest for life or lives, or for an estate in fee simple or fee tail (as the case may be) in remainder immediately expectant on the estate of such unborn or unascertained person of or to such manor or lands (if any, and if legally competent) shall be a party to and shall join in the same; and if there be no such person, or if such person be not legally competent, unless the trustees or trustee (if any) of such manor or lands during the suspense or contingency of the then immediate or expectant estate in fee simple or fee tail in such manor or lands shall in like manner concur.

3. This Act may be cited as the Places of Worship Sites Amendment Act, 1882.

CHAP. 22.

Boiler Explosions Act, 1882.

ABSTRACT OF THE ENACTMENTS.

- 1. *Short title.*
- 2. *Extent of Act.*
- 3. *Interpretation of terms.*
- 4. *Application of Act.*
- 5. *Notice of boiler explosion to be sent to the Board of Trade.*
- 6. *Power for Board of Trade to direct inquiry as to boiler explosion.*
- 7. *As to costs and expenses of inquiry.*
- 8. *Recovery of fines.*

SCHEDULE.

**An Act to make better provision for
Inquiries with regard to Boiler Ex-
plosions. (12th July 1882.)**

WHEREAS special provision has been made by law for making inquiry into the causes and circumstances of boiler explosions on board ships and on railways, and it is expedient that like provision be made for making inquiries with respect to boiler explosions in other cases:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Boiler Explosions Act, 1882.

2. This Act shall extend to the whole of the United Kingdom.

3. In this Act the term "boiler" means any closed vessel used for generating steam, or for heating water, or for heating other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes.

The term "court of summary jurisdiction" means any justices of the peace, metropolitan police magistrate, stipendiary magistrate, sheriff, sheriff substitute, or other magistrate or officer, by whatever name called, who is capable of exercising jurisdiction in summary proceedings for the recovery of penalties.

4. This Act shall not apply to any boiler used exclusively for domestic purposes, or to any boiler used in the service of Her Majesty, or to any boiler on board a steamship having a certificate from the Board of Trade, or to any boiler explosion into which an inquiry may be held under the provisions of the Coal Mines Regulation Act, 1872, and the Metalliferous Mines Regulation Act, 1872, or either of them.

5. (1.) On the occurrence of an explosion from any boiler to which this Act applies, notice thereof shall, within twenty-four hours thereafter, be sent to the Board of Trade by the owner or user, or by the person acting on behalf of the owner or user.

(2.) The notice shall state the precise locality as well as the day and hour of the explosion, the number of persons injured or killed, in addition to the purposes for which the boiler was used, and, generally, the part of the boiler that failed, and the extent of the failure, and

such other particulars, if any, as the Board of Trade by notice inserted in the London Gazette may require, and shall be in the form printed in the schedule to this Act, or in such other form as the Board of Trade may from time to time approve for the purpose.

(3.) If default is made in complying with the requirements of this section, the person in default shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

6. (1.) On receiving notice of a boiler explosion the Board of Trade may, if it thinks fit, appoint one or more competent and independent engineer or engineers, practically conversant with the manufacture and working of boilers, to make a preliminary inquiry with respect to the explosion, and the persons so appointed shall have the powers conferred on the court by sub-section (4) of this section. If it appears to the Board of Trade, either upon or without such preliminary inquiry, that a formal investigation of the causes and circumstances attending the explosion is expedient, the Board of Trade may direct a formal investigation to be held; and with respect to such investigation the following provisions shall have effect:

(2.) Formal investigations of boiler explosions shall be made at or near the place of such explosion by a court consisting of not less than two commissioners appointed by the Board of Trade, of whom one at least shall be a competent and practical engineer specially conversant with the manufacture and working of steam boilers, and one a competent lawyer. The court shall be presided over by one of the commissioners, the selection being made by the Board of Trade.

(3.) Any such formal investigation shall be held in open court, in such manner, and under such conditions, as the commissioners may think most effectual for ascertaining the causes and circumstances of the explosion, and for enabling them to make the report herein-after mentioned in this section.

(4.) The court shall have, for the purpose of its investigations, all the powers of a court of summary jurisdiction when acting as a court in the exercise of its ordinary jurisdiction, and shall in addition have the following powers; viz.,

(a.) The court, or any one appointed by it, may enter and inspect any place or building, the entry or inspection whereof appears to the court requisite for the said purpose:

(b.) It may by summons under its hand require the attendance of all such persons as it thinks fit to call before it, and examine for the said purpose, and may for

such purpose require answers or returns to such inquiries as it thinks fit to make :

(c.) It may require and enforce the production of all books, papers, and documents which it considers important for the said purpose :

(d.) It may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination :

(e.) Every person so summoned, not being the owner or user of the boiler, or in the service or employment of the owner or user, or in any way connected with the working or management of the boiler, shall be allowed by the Board of Trade such expenses as would be allowed to a witness attending on subpoena before a court of record, and in Scotland to a witness attending a criminal trial by jury in the sheriff court; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, and in Scotland to the auditor of the Court of Session, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses.

(5.) The court making a formal investigation with respect to any boiler explosion, shall present a full and clear report to the Board of Trade, stating the causes of the explosion, and all the circumstances attending the same, with the evidence, adding thereto any observations thereon, or on the evidence, or on any matters arising out of the investigation which they think right to make, and the Board of Trade shall cause every such report to be made public in such manner as it thinks fit. When no formal investigation is held, the report presented to the Board of Trade by the engineer making a preliminary inquiry with

respect to a boiler explosion shall be made public in such manner as the Board of Trade thinks fit.

7. The court may order the costs and expenses of a preliminary inquiry or formal investigation or any part thereof, including therein the remuneration of persons holding such inquiry or investigation, to be paid by any person summoned before it, or by the Board of Trade; and such order shall, on the application of any party entitled to the benefit of the same, be enforced by any court of summary jurisdiction as if such costs and expenses were a penalty imposed by such court.

The Board of Trade may, if they think fit, pay to the persons holding any inquiry or investigation under this Act such remuneration as they may with the consent of the Treasury appoint.

If and so far as not otherwise provided for, all costs and expenses incurred by the Board of Trade, including any remuneration paid under this section, and any costs and expenses ordered by the court to be paid by the Board of Trade, shall be paid out of moneys to be provided by Parliament.

8. Any fine payable under this Act shall be recoverable in England in the manner provided by the Summary Jurisdiction Acts, in Scotland in the manner provided by the Summary Jurisdiction Acts, 1864 and 1881, and of any Act or Acts amending the same, and in Ireland within the police district of Dublin metropolis, in accordance with the provisions of the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district elsewhere in Ireland in accordance with the provisions of the Petty Sessions (Ireland) Act, 1851 (14 & 15 Vict. c. 93), and any Act amending or affecting the same.

SCHEDULE.

REPORT OF EXPLOSION of a STEAM BOILER to be sent to the BOARD OF TRADE within twenty-four hours after the occurrence of an EXPLOSION.

See Section 5.

1. Name of premises or works on which the boiler exploded.
2. Address by the post.
3. Day and hour of explosion.
4. Number of persons killed.
5. Number of persons injured.
6. General description of the boiler.

7. Purposes for which the boiler was used.
8. Part of the boiler which failed, and the extent of failure generally.
9. Pressure at which the boiler was worked.
10. Name and address of any society or association by whom the boiler was last inspected or insured.

Signature of person responsible
for the accuracy of the parti-
culars contained in this form.

Address

Date

CHAP. 23.

Public Health (Fruit Pickers Lodgings) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction of Act.*
2. *Power to make byelaws for fruit pickers.*

An Act to extend the Public Health Act, 1875, to the making of Byelaws for Fruit Pickers. (12th July 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Health (Fruit Pickers Lodgings) Act, 1882,

and shall be construed as one with the Public Health Act, 1875.

2. Section three hundred and fourteen of the Public Health Act, 1875, which enables any local authority to make byelaws for securing the decent lodging and accommodation of persons engaged in hop picking within the district of such authority, shall be deemed to extend to and authorise the making of byelaws for securing the decent lodging and accommodation of persons engaged in the picking of fruit and vegetables.

CHAP. 24.

Petty Sessions (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of term "agent" in 14 & 15 Vict. c. 93.*
2. *Short title.*

An Act to amend the Petty Sessions (Ireland) Act, 1851. (12th July 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In the Petty Sessions (Ireland) Act, 1851, the word "agent" shall include the father, son, husband, wife, or brother of the com-

plainant or defendant; provided that any such person be thereunto authorised in writing by the complainant or defendant (as the case may be), and do receive no remuneration therefor, and have the leave of the court to appear and be heard, and that the court is satisfied that such complainant or defendant is from infirmity, or other unavoidable cause, unable to appear.

2. This Act may be cited as the Petty Sessions (Ireland) Act, 1882; and the Petty Sessions (Ireland) Act, 1851, and this Act may be cited together as the Petty Sessions (Ireland) Acts, 1851, 1882.

CHAP. 25.

Prevention of Crime (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

SPECIAL COMMISSION.

1. *Special Commission Court.*
2. *Appeal from Special Commission Court to Court of Criminal Appeal.*
3. *Constitution of Court of Criminal Appeal.*

PART II.

SPECIAL JURORS AND VENUE.

4. *Special jurors in criminal cases.*
5. *Penalty for non-attendance of special juror.*
6. *Change of venue.*

PART III.

OFFENCES AGAINST THIS ACT.

7. *Intimidation.*
8. *Riots and other offences.*
9. *Unlawful associations.*
10. *Illegal meetings.*
11. *Arrest of persons found at night under suspicious circumstances.*

PART IV.

GENERAL POWERS.

12. *Arrest of strangers found under suspicious circumstances.*
13. *Newspapers.*
14. *Searches for arms and illegal documents.*
15. *Application of Alien Act to aliens.*
16. *Power of justices to summon witnesses.*
17. *Power of apprehending absconding witnesses.*
18. *Additional constabulary force.*
19. *Power of Lord Lieutenant as to compensation to be paid in certain cases of murder or maiming.*
20. *Description of "district" and provision as to raising charge.*

PART V.

SUPPLEMENTAL PROVISIONS AND DEFINITIONS.

21. *Punishment for offence against Act.*
22. *Summary procedure for offences under Act.*
23. *Proclamation of districts.*
24. *Supplemental provisions as to proclamations and orders.*
25. *Regulation as to warrants and notice of trial.*
26. *Roata of judges.*
27. *Regulations as to courts.*
28. *Rules of procedure in Schedule.*
29. *Allowances to judges, witnesses, and others.*
30. *Rules for procedure and matters to be prescribed.*

31. *Powers of Act to be cumulative.*
32. *Saving for trade unions.*
33. *Saving for associations.*
34. *Definition of "unlawful association."*
35. *General definitions.*
36. *Short title.*
37. *Duration of Act.*

SCHEDULES.

An Act for the prevention of Crime in Ireland. (12th July 1882.)

WHEREAS by reason of the action of secret societies and combinations for illegal purposes in Ireland the operation of the ordinary law has become insufficient for the repression and prevention of crime, and it is expedient to make further provision for that purpose:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

SPECIAL COMMISSION.

1. (1.) The Lord Lieutenant may from time to time direct a commission or commissions to be issued for the appointment of a court or courts of special commissioners for the trial in manner provided by this Act of persons committed for trial for any of the following offences; that is to say,

- (a.) Treason or treason-felony committed after the passing of this Act;
- (b.) Murder or manslaughter;
- (c.) Attempt to murder;
- (d.) Aggravated crime of violence against the person;
- (e.) Arson, whether by common law or by statute;
- (f.) Attack on dwelling-house;

and whenever it appears to the Lord Lieutenant that in the case of any person committed for trial for any of the said offences a just and impartial trial cannot be had according to the ordinary course of law, the Lord Lieutenant may by warrant assign to any such court of Special Commissioners (in this Act referred to as a Special Commission court) the duty of sitting at the place named in the warrant and of there, without a jury, hearing and determining, according to law, the charge made against the person so committed for trial and named in the warrant, and of doing therein what to justice appertains.

(2.) A Special Commission court shall consist of three judges of the Supreme Court of

Judicature in Ireland (other than the Lord Chancellor), to be named in such commission, and they shall try in open court, according to the tenor of a warrant under this Act, all persons named in the warrant who may be brought before them for trial.

(3.) The evidence taken on a trial before a Special Commission court, and the reasons, if any, given by the judges in delivering judgment, shall be taken down by a shorthand writer, who shall be sworn to take the same accurately to the best of his ability.

(4.) A person tried by a Special Commission court shall be acquitted unless the whole court concur in his conviction, and the judges of the said court shall in all cases of conviction give in open court the reasons for such conviction.

(5.) Where a person is tried by a Special Commission court he shall, if acquitted by such court, be entitled to be conveyed free of cost to any place he selects in the county in which he was committed for trial.

(6.) The Lord Lieutenant shall from time to time provide for the payment of the reasonable expenses of witnesses, and in the case of poor persons charged with treason, treason-felony, or murder, for the payment of counsel required for the defence of a person brought for trial before a Special Commission court, and certified to be so required by such court.

Provided that nothing in this Act shall empower a Special Commission court to try a person for any offence, unless a judge and jury in Ireland would, but for this section, have had jurisdiction to try that person for the said offence.

2. (1.) Any person convicted by a Special Commission court under this Act may, subject to the provisions of this Act, appeal either against the conviction and sentence of the court, or against the sentence alone, to the Court of Criminal Appeal herein-after mentioned, on any ground, whether of law or of fact; and the Court of Criminal Appeal shall (subject to the provisions of this Act) have power after hearing the appeal to confirm the conviction and sentence, or to enter an acquittal, or to vary the conviction or sentence.

Provided that—

(a.) The conviction shall not be varied save by substituting a conviction for some less offence, for which the Special Commission court had jurisdiction on the trial to convict the appellant; and

(b.) The sentence shall not be increased.

(2.) The conviction and sentence as confirmed or varied by the Court of Criminal Appeal shall have effect as if it were the conviction and sentence of the Special Commission court, and shall be deemed to be the sentence of a Special Commission court.

(3.) If the appellant establishes want of jurisdiction in the Special Commission court, the Court of Criminal Appeal may quash the proceedings.

(4.) The Court of Criminal Appeal shall have for the purpose of any appeal all the powers and jurisdiction of the Special Commission court.

3. (1.) The Court of Criminal Appeal under this Act shall consist of the judges of the Supreme Court of Judicature in Ireland (with the exception of the Lord Chancellor), and any of those judges not less than five may sit and exercise the powers of the court.

Provided that a judge who sat in the Special Commission court shall not sit in the Court of Criminal Appeal on any appeal against a conviction or sentence by that Special Commission court to which he was a party.

(3.) The determination of any appeal shall be according to the determination of a majority of the judges who heard the appeal.

PART II.

SPECIAL JURORS AND VENUE.

4. (1.) Where the trial of a person charged with an indictable offence would otherwise have been had by a jury before some court not being a court of general or quarter sessions, the Attorney General for Ireland, or the person charged, may, on serving the prescribed notice in the prescribed manner, require that the jury shall consist entirely of special jurors, and the jury shall consist of special jurors accordingly. Where more persons than one are to be tried together on the same charge, and notice for special jurors has not been served by the Attorney General, but has been served by some and not all of such persons, the jury shall consist entirely of special jurors or not, as the court may direct:

Provided that a trial shall not be impeached on any ground connected with the qualification of the jurors or any of them.

(2.) The special jurors shall be taken by

ballot in manner provided by the nineteenth section of the Juries Procedure (Ireland) Act, 1876, from all the jurors upon the panel returned by the sheriff from the special jurors book.

(3.) A county mentioned in the first column of the Second Schedule to this Act, and a county of a city or town set opposite the name of that county in the second column of the said schedule, shall as respects special jurors be deemed to be contributory counties; and the special jurors of each of two contributory counties shall be lawful jurors for the trial of any person who is to be tried by special jurors in either of such contributory counties; and, whenever a trial requiring special jurors under this Act is about to take place in any one of two contributory counties, steps shall be duly taken by the sheriff of each of the said counties for returning to the proper officer of the court in which such trial is held the panel of the special jurors of his county, and the special jury for such trial shall be taken by ballot accordingly from all the jurors upon such two panels indifferently; and the sheriff of each of the said contributory counties shall deliver to the proper officer of the court the cards for such ballot, and the ballot shall be taken in manner provided by the said nineteenth section of the Juries Procedure (Ireland) Act, 1876.

The expression "sheriff" in this section includes any officer who by law performs the duties of sheriff in relation to the return of jurors.

5. The words "twenty pounds" shall be substituted for the words "forty shillings" in section four of the Juries Procedure (Ireland) Act, 1876, in the case of special jurors.

6. (1.) The Attorney General, on making application to the High Court of Justice or a judge thereof, and certifying that in his opinion it is expedient in the interests of justice that a person awaiting his trial for an indictable offence should be tried in some county named in the certificate other than the county in which he would otherwise be tried, shall be entitled as of right to an order directing such person to be tried in the county named in the certificate; and, if such order is made before any indictment or inquisition has been found, the said offence may be inquired of in the county named in the order in like manner in all respects as if it had been committed in that county; and, if the order is made after an indictment or inquisition has been found, the indictment or inquisition shall be transmitted to the court of assize for the county named in the order, and have effect as if it had originally been duly found at or returned to that court;

and, in either case, the offence may be heard and determined, and the person charged with the said offence may be convicted and sentenced, as if the offence had been committed in the county named in the order, but the sentence of the court shall be carried into effect as if such person had been tried in the county in which he would have been tried if the said order had not been made, and such person shall, if necessary, be removed accordingly, in pursuance of an order of the court made for the purpose.

(2.) The Lord Lieutenant shall from time to time provide for the payment, if an order is made under this section respecting the trial of any person, of the reasonable expenses of such person coming to the place at which, in pursuance of such order, he is to be tried in any case where he was admitted to bail, and also of the witnesses required for the defence of such person, and certified by the court before whom he is tried to be so required.

(3.) Where an order is made under this Act directing a change of venue, the prescribed Crown solicitor, or other prescribed officer under the direction of the Attorney General, shall provide, where necessary, for advancing money for enabling the person to be tried and the witnesses required for the defence of such person to attend the trial.

(4.) For the purposes of this section the expression "awaiting his trial" means committed for trial or charged with any indictable offence by indictment or inquisition; and "court of assize" includes any court of oyer and terminer or gaol delivery.

PART III.

OFFENCES AGAINST THIS ACT.

7. Every person who—

Wrongfully and without legal authority uses intimidation, or incites any other person to use intimidation,

(a.) to or towards any person or persons with a view to cause any person or persons, either to do any act which such person or persons has or have a legal right to abstain from doing, or to abstain from doing any act which such person or persons has or have a legal right to do; or

(b.) to or towards any person or persons in consequence, either of his or their having done any act which he or they had a legal right to do, or of his or their having abstained from doing any act which he or they had a legal right to abstain from doing,

shall be guilty of an offence against this Act.

In this Act the expression "intimidation" includes any word spoken or act done in order to and calculated to put any person in fear of any injury or danger to himself, or to any member of his family, or to any person in his employment, or in fear of any injury to or loss of his property, business, or means of living.

8. Every person who in a proclaimed district—

(a.) Takes part in any riot or unlawful assembly; or

(b.) Within nine months after the execution of any writ of possession or decree for possession of any house or land takes or holds forcible possession of such house or land or any part thereof; or

(c.) Commits an aggravated act of violence against the person; or

(d.) Commits an assault on any constable, bailiff, process server, or other minister of the law, while in the execution of his duty or in consequence thereof,

shall be guilty of an offence against this Act.

9. Every person who knowingly—

(a.) Is a member of an unlawful association as defined by this Act; or

(b.) Takes part in the operations of an unlawful association as defined by this Act, or of any meeting thereof,

shall be guilty of an offence against this Act.

10. (1.) The Lord Lieutenant may from time to time, by order in writing of which public notice shall be given and published in the prescribed manner, prohibit any meeting which he has reason to believe to be dangerous to the public peace or the public safety. A copy of such order shall be forthwith served in the prescribed manner if possible on the promoters of such meeting.

(2.) And, in case such meeting be so prohibited, two or more justices of the peace shall attend at the place where they have reason to believe such meeting is to be held, and one or more of such justices shall in the prescribed form and manner then and there notify aloud, to the persons attending, that such meeting is prohibited by the Lord Lieutenant; and in case any of the persons so met or assembled together shall not disperse forthwith within a reasonable time, each of such persons thereupon shall be guilty of an offence against this Act; so, however, that the term of imprisonment awarded shall not exceed three months.

(3.) A copy of every such order shall be laid before Parliament within fourteen days after the day on which such order was made, if Parliament be then sitting, and if not, then within fourteen days after the next meeting of Parliament.

11. (1.) In a proclaimed district, if a person is out of his place of abode at any time after one hour later than sunset and before sunrise under circumstances giving rise to a reasonable suspicion of a criminal intent, any constable may arrest that person and bring him forthwith before the nearest available justice of the peace, and such justice, after inquiry into the circumstances of the case, may either discharge him or take the necessary steps, by committing him to prison or taking reasonable bail with two sufficient sureties not exceeding fifty pounds each, to bring him as soon as may be, and within a period not exceeding seven days, before a court of summary jurisdiction acting under this Act, and if on such person appearing before a court of summary jurisdiction acting under this Act, and the case being heard, the court believes that such person was out of his place of abode and not upon some lawful occasion or business he shall be guilty of an offence against this Act; so, however, that the term of imprisonment awarded shall not exceed three months.

(2.) Upon the hearing of a charge under this section against a person, that person may, if he thinks fit, be examined as an ordinary witness in the case.

PART IV.

GENERAL POWERS.

12. (1.) If a constable finds in a proclaimed district any stranger under circumstances giving rise to a reasonable suspicion of a criminal intent, he may arrest such stranger and bring him before a justice of the peace, and if such justice after inquiry into the circumstances of the case by evidence on oath, is satisfied that such stranger has not a lawful object in being in such place the justice may require him to give security by entering into a recognizance with two sufficient sureties to an amount not exceeding fifty pounds for each surety, to keep the peace and to be of good behaviour towards all Her Majesty's subjects during the ensuing six months, and, in default of his giving such security, may commit him to prison until he gives such security or is discharged in pursuance of this section, so however that he shall not be so imprisoned for more than one month.

(2.) The justice shall, on the application of any such person brought before him as aforesaid, adjourn the further hearing of the case to a petty sessions to be held for the petty sessions district within which such arrest took place, not less than four days after the date of such application, and to consist of at least two justices, on such person giving reasonable bail

for his appearance at such petty sessions. Such court of petty sessions shall deal with the case in manner provided by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same, in the case of summary proceedings, and shall have the same power to deal with such person as is in this section herein-before conferred on a justice of the peace.

(3.) Upon the inquiry into the circumstances of the case of a person arrested under this section, such person and the husband or wife of such person as the case may be, may, if such person thinks fit, be examined as an ordinary witness in the case.

(4.) The justice or justices committing a person to prison in pursuance of this section may for good cause discharge a person so committed, and in any case shall forthwith transmit a report of the committal to the Lord Lieutenant, stating the grounds of the committal, the security required, and any explanation given by the prisoner by way of defence. The Lord Lieutenant may order the prisoner to be discharged if it seems just to him so to do.

13. (1.) Where after the passing of this Act any newspaper wherever printed is circulated or attempted to be circulated in Ireland, and any copy of such newspaper appears to the Lord Lieutenant to contain matter inciting to the commission of treason or of any act of violence or intimidation, the Lord Lieutenant may order that all copies of such newspaper containing that matter shall, when found in Ireland, be forfeited to Her Majesty, and any constable duly authorised by the Lord Lieutenant may seize the same.

(2.) Where it appears to the Lord Lieutenant that such newspaper was printed and published in Ireland, the order of the Lord Lieutenant shall indicate the part of the newspaper on account of which the order was made, and if the newspaper specifies the office in Ireland at which the newspaper is printed and published, the order shall, as soon as practicable, be served in the prescribed manner at the office so specified.

(3.) Every order of the Lord Lieutenant under this section shall be published in the "Dublin Gazette," and shall be laid before Parliament within thirty days if Parliament is then sitting, and, if not, within thirty days after the next sitting of Parliament.

14. (1.) It shall be lawful for the Lord Lieutenant from time to time by warrant in the prescribed form to direct the inspectors and sub-inspectors of constabulary for the time being acting in any constabulary district, or any of them, to search for and seize in any proclaimed district, or in any part thereof,

specified in the warrant, all or any of the following articles; that is to say, any arms, ammunition, papers, documents, instruments, or articles suspected to be used or to be intended to be used for the purpose of or in connexion with any secret society or secret association existing for criminal purposes; all such articles when seized shall be forfeited to Her Majesty.

(2.) Any inspector or sub-inspector so authorised by the warrant may, at any time within three months from the date of the warrant, and at any place within the proclaimed district or the part thereof specified in the warrant, together with such constables and other persons as he calls to his assistance, seize, detain, and carry away any of the articles above mentioned which he may find; and for the purposes aforesaid may at any time enter into any house, building, or place, and if admittance is refused or is not obtained within a reasonable time after it is first demanded, may enter by force in order to execute such warrant.

(3.) The person so executing the warrant shall, if desired, before executing the warrant produce the same.

15. The Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter twenty, intituled "An Act to authorise for one year and to the end of the then next session of Parliament the removal of aliens from the realm," and a copy of which is set forth in the third schedule to this Act, is hereby re-enacted, and shall continue in force for the same period as this Act.

Provided as follows:—

- (1.) For the purposes of construction the Act mentioned in this section shall be deemed to have been passed at the date of the passing of this Act, and the expressions in the said Act referring to its commencement or passing shall be construed accordingly, but section seven of the said Act, providing for its duration, shall be of no effect:
- (2.) An alien convicted of a misdemeanour under section two of the said Act shall be treated as a misdemeanant of the first class or division:
- (3.) The place in which any examination of witnesses or hearing of a case before the Lords of the Privy Council, in pursuance of section three of the said Act is held, shall be in open court:
- (4.) The said Act shall extend to the Isle of Man in like manner as if that Isle were declared by the said Act to form part of Great Britain.

16. Where a sworn information has been

made that an offence has been committed, any resident magistrate in the county or place in which the offence was committed, although no person may be charged before him with the commission of such offence, may summon to appear before him at a police office or the place where the petty sessions for the district in which the said offence has been committed are usually held any person within his jurisdiction whom he has reason to believe to be capable of giving material evidence concerning such offence, and he may examine on oath and take the deposition of such person concerning any such offence, and, if he see cause, may bind such person by recognizance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognizance; and the law relating to a witness when summoned before a justice having jurisdiction and required to give evidence concerning the matter of an information or complaint shall apply to a witness summoned under this section.

(1.) An offence for the purposes of this section means any felony or misdemeanour, and also any offence against this Act, with the exception of the offences specified in sections ten and eleven of this Act.

(2.) A person summoned to appear under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself, but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in case of an indictment or other criminal proceeding for perjury, be admissible in evidence against him in any proceeding civil or criminal.

(3.) A magistrate who conducts the examination, under this section, of a person concerning any offence, shall not, if such offence is punishable on summary conviction, take part in the hearing and determination of a charge for that offence, and shall not, if such offence is an indictable offence, take part in the committing for trial of such person for such offence.

17. Whenever any person is bound by recognizance to give evidence before justices, or any criminal court, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime

he produces sufficient sureties. Provided that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

18. (1.) When it appears to the Lord Lieutenant from time to time, that by reason of the existence or apprehension of crime and outrage in any district, the number of constabulary ordinarily employed in such district is not sufficient, he may by proclamation, which shall be published in the "Dublin Gazette," declare that for the reasons aforesaid such district requires additional constabulary, and may order additional constabulary to be employed in such district, and for that purpose may from time to time add to the Royal Irish Constabulary such officers and men (if any) as he thinks necessary.

(2.) The Inspector-General of the Royal Irish Constabulary shall from time to time make out, in such manner as the Lord Lieutenant may order, an account of the total cost of any additional constabulary employed in any district under this section, and shall certify the amount to the Lord Lieutenant.

(3.) The whole, or such part of the whole as the Lord Lieutenant may order, of the amount so certified, shall be a charge payable by the district in which such additional constabulary are employed. And the Lord Lieutenant may exempt from charge any specified portion of the area declared to be chargeable, or any specified rateable property in such area.

Provided that if the district is in a county where the number of constabulary is, after allowing for vacancies arising from death, absence on leave, absence from illness, or other like cause, deficient as compared with the quota for that county, and additional constabulary are employed, under this section, in the county, a charge under this section shall not be made in respect of such number of the additional constabulary as is equal to the number required for the time being to make up the said deficiency.

There shall be published monthly in the Dublin Gazette a return showing the number of additional constabulary employed pursuant to this section, the district or districts in which they are respectively employed, and a statement of the cost or approximate cost to each district resulting from such employment.

19. (1.) Where it appears from information on oath and in writing that any one has been murdered, maimed, or otherwise injured in his person, and that such murder, maiming, or injury is a crime of the character commonly

known as agrarian, or arising out of any unlawful association, and an application is made for compensation, the Lord Lieutenant may, if he thinks fit, after giving public notice in the district in the prescribed manner, by warrant nominate such person or persons being or one of whom shall be a practising barrister of at least six years standing as he thinks fit to investigate the application, and after hearing all parties whom he or they deem to be interested, including any body of ratepayers of the district, to report to the Lord Lieutenant thereon; the parties shall be heard personally or by counsel, and the evidence taken on oath in open court.

(2.) For the purpose of such investigation the person or persons so nominated shall, with respect to enforcing the attendance of witnesses and all other matters, have the same power as justices sitting in petty sessions. Such public notice shall be given of the place and time at which the investigation will be held, and the investigation shall be proceeded with in such manner, and the report to the Lord Lieutenant shall be in the prescribed form and shall be made in such manner as the Lord Lieutenant may direct. The remuneration of such person or persons and the expenses of holding the investigation, to such amount as may be fixed by the Lord Lieutenant, with the approval of Her Majesty's Treasury, shall be defrayed out of moneys to be provided by Parliament.

(3.) Upon such report, the Lord Lieutenant may dismiss the application if he thinks fit, or may award such sum for compensation as he thinks just.

(4.) The said sum shall, if the Lord Lieutenant think just, be a charge payable by such district and in such instalments as the Lord Lieutenant may by warrant order, and shall be paid to the personal representative of the person murdered or to the person maimed or injured, or if he is dead to his personal representative.

(5.) Applications under this Act may be made by the personal representative or one of the next-of-kin of any person murdered, or by any person maimed or injured, or by a Crown solicitor, or by any person in that behalf authorised by the Lord Lieutenant.

(6.) This section shall not apply to any cases of murder, maiming, or injury which have occurred before the first day of June one thousand eight hundred and eighty, except cases in which notice of intention to apply for a presentment under the provisions of the thirty-ninth section of the Peace Preservation (Ireland) Act, 1870, had been published as prescribed by that Act, but the claim for com-

pensation failed to be decided by reason of the expiration of that Act.

(7.) Where the act causing the murder, maiming, or injury has occurred since the passing of this Act, an application for compensation under this section shall not be entertained unless it is made within three months after the occurrence of the act causing the murder, maiming, or injury.

(8.) Where the act causing the murder, maiming, or injury has occurred before the passing of this Act an application for compensation under this section shall not be entertained unless it is made within three months after the passing of this Act.

20. (1.) For the purpose of the provisions of this Act with respect to additional constabulary in any district, and compensation in cases of murder, maiming, or injury, the expression "district" means any county, barony, townland, or parish, or part or parts thereof respectively.

(2.) Any charge in respect of such additional constabulary, or any sum for such compensation as aforesaid, which is for the time being a charge payable by any district shall be apportioned rateably upon all rateable hereditaments in the district other than those exempted by the Lord Lieutenant in pursuance of this Act, and shall be payable by the occupiers thereof:

(3.) Such apportionment shall be made and such charges collected by persons for the time being appointed by warrant of the Lord Lieutenant for that purpose; and every person so appointed collector shall, for the purpose of such collection, have all the powers, authorities, and remedies given by law to the collector of grand jury cess, and shall account for the sums which he is authorised to collect in manner directed from time to time by the Lord Lieutenant, and the Lord Lieutenant's warrant shall be conclusive proof that the sums named in the warrant are to be raised in the district as therein mentioned, and that the person named in the warrant is authorised to collect the same.

(4.) Any person liable to any portion of such charge shall on demand before the execution of the warrant for collection be entitled to inspect the apportionment and the warrant or a copy thereof for the collection of the same.

(5.) A return showing the sums from time to time collected under this section, the districts from which the same have been levied, and the manner in which the same have been disposed of, shall be presented annually to Parliament within one month after the opening of Parliament.

Every warrant imposing a charge upon a district in respect of such additional constabu-

lary, or such compensation as aforesaid, shall specify the time during which it is to remain in force, and shall be in the prescribed form, and shall be published in the prescribed manner, and a copy of every such warrant shall be laid before Parliament within one month after the date of the warrant, if Parliament is then sitting, and if not within one month after the next meeting of Parliament, together with a statement showing the following particulars, in cases where such particulars do not appear in the warrant; that is to say, the valuation of the district proposed to be charged; the number of instalments by and the time within which the charge is to be raised; the poundage rate necessary for raising the same; and the grounds upon which the district has been charged, and the number of inhabitants in such district at the last census as far as can be ascertained.

PART V.

SUPPLEMENTAL PROVISIONS AND DEFINITIONS.

21. A person guilty of an offence against this Act shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding six months, or such less term as is in that behalf fixed by any section of this Act.

22. (1.) Any offence against this Act shall be punishable on summary conviction, and may be prosecuted—

(a.) Within the police district of Dublin Metropolis in manner provided by the Acts regulating the powers and duties of justices of the peace of such district or of the police of such district; and

(b.) Elsewhere in manner provided by the Petty Sessions (Ireland) Act, 1851, and the Acts amending the same,

subject nevertheless to the provisions of this section.

(2.) The proceedings for enforcing the appearance of the person charged, and the attendance of witnesses, shall be the same, and the evidence for both the prosecution and defence shall be taken as depositions in the same manner as if the offence were an indictable offence; but, save as aforesaid, the procedure, including the enforcing of the attendance of witnesses for the defence, shall be the same as in the case of an offence punishable on summary conviction.

(3.) A charge for an offence against this Act shall be heard and determined—

(a.) Within the police district of Dublin Metropolis before a divisional justice of that district; and

(b.) Elsewhere before two resident magistrates in petty sessions, one of whom shall

be a person of the sufficiency of whose legal knowledge the Lord Lieutenant shall be satisfied:

And in this Act the expression "court of summary jurisdiction acting under this Act" means any such divisional justice or two resident magistrates.

(4.) The petty sessions held by two resident magistrates may be held at any place fixed by law for the holding of petty sessions, and on such days as may be from time to time determined in the prescribed manner.

(5.) Where a person is convicted summarily of an offence against this Act and sentenced to any term of imprisonment exceeding one month, such person may appeal against such conviction to a court of general sessions held in pursuance of this section, but the proceedings before a divisional justice or two resident magistrates, on a charge for an offence against this Act, shall not be reviewed in any other manner, whether by means of a writ of certiorari or otherwise, and such appeal shall, save as herein-after otherwise provided,—

(a.) Be subject, except in the police district of Dublin Metropolis, to the provisions to which an appeal under the Petty Sessions (Ireland) Act, 1851, is by section twenty-four of that Act, and any enactments amending that section, made subject; and

(b.) Be subject in the police district of Dublin Metropolis to the said provisions, with such modifications therein as may be prescribed for the purpose of adapting the same to the circumstances of that district.

(6.) For the purpose of hearing and determining appeals under this section general sessions of the peace shall be held at the prescribed times and places, and at such general sessions the chairman of the county shall sit as sole judge of the court, and shall hear and determine any such appeals which are brought before him, and shall have the jurisdiction and powers of a court of quarter sessions, and the decision of such chairman, whether as to the jurisdiction of the justice or magistrates or otherwise, shall be final and conclusive.

(7.) Any depositions taken at the hearing of a case before the divisional justice or two resident magistrates may be admitted in evidence on an appeal in that case.

(8.) The expression "chairman of the county" in this section means a county court judge and chairman of the quarter sessions of a county, and includes a recorder.

23. The Lord Lieutenant, by and with the advice of the Privy Council in Ireland, may from time to time, when it appears to him necessary for the prevention of crime and

outrage, by proclamation declare the provisions of this Act which relate to proclaimed districts or any of those provisions to be in force within any specified part of Ireland as from the date of the proclamation, or any later date specified in the proclamation; and the provisions of this Act which are mentioned in the proclamation shall after the said date be in force within such specified part of Ireland, and that part of Ireland shall be a proclaimed district within the meaning of the provisions so mentioned. The proclamation shall provide for the manner of the promulgation thereof.

24. (1.) The Lord Lieutenant, but by and with the advice of the Privy Council, where a proclamation or order has been made by and with such advice, may, by a further proclamation or order, from time to time alter or revoke any proclamation or order made by him under this Act. A copy of every proclamation under this Act shall be laid before each House of Parliament within fourteen days after the making thereof, if Parliament is then sitting, and if not, then within fourteen days after the next meeting of Parliament.

(2.) Any warrant, order, notice, or other document of the Lord Lieutenant under this Act may be signified under his hand or under the hand of the Chief Secretary to the Lord Lieutenant.

(3.) Every proclamation under this Act, and a notice of the promulgation thereof in the manner provided, shall be published in the Dublin Gazette.

(4.) The production of a printed copy of the Dublin Gazette purporting to be printed and published by the Queen's authority, and containing the publication of any proclamation, order, or notice under this Act, shall be conclusive evidence of the contents of such proclamation, order, or notice, and of the date thereof, and in the case of a proclamation that the district specified in such proclamation is a proclaimed district within the meaning of the provisions of this Act mentioned in the proclamation, and that the said proclamation has been duly promulgated, and in the case of an order that it has been duly made.

25. (1.) A warrant for the trial by a Special Commission court of a person charged with an offence shall be in the prescribed form, and shall, subject to the other provisions of this Act, be issued before he is arraigned for trial for such offence before some other tribunal in the ordinary course of law, or before the expiration of two months from the date of his being committed for trial, whichever of such events may first happen.

(2.) A copy of a warrant for the trial of a person before a Special Commission court

shall be served on such person in the prescribed manner not less than fourteen days before his trial before such court begins, and shall be published in the "Dublin Gazette," and shall be laid before Parliament within fourteen days, if Parliament be then sitting, and if not, within fourteen days after the then next meeting of Parliament.

(3.) Not less than fourteen days before the sitting of any Special Commission court to try a person for any offence, public notice shall be given in the prescribed manner in the locality in which the person charged with such offence was committed for trial, stating the names of the Special Commissioners, the said offence, the name of the person charged with such offence, and the place at which the court will sit and the day on which the sitting of the court will begin. A copy of such notice shall also be served in the prescribed manner, and within the prescribed time, on the person to be tried.

(4.) An objection to the jurisdiction of a Special Commission court to try a person for any offence shall not be entertained by reason only of any non-observance of the provisions of this section; but the court, on application, may adjourn the case, so as to prevent any person charged being prejudiced by such non-observance.

26. (1.) The judges to be members of a Special Commission court, and the judges to sit in the Court of Criminal Appeal under this Act, shall be respectively selected according to separate rotas to be determined by ballots held at the prescribed time and in the prescribed manner; but where a judge appears to the Lord Lieutenant to be, on account of illness or some reasonable cause, ineligible, the judge next on the rota shall be selected.

(2.) Any judge appointed after either rota is determined shall be added after all the other judges on the rota.

(3.) An objection to the jurisdiction of a Special Commission court, or of the Court of Criminal Appeal under this Act, shall not be entertained by reason only of the rota of the judges to form or sit on such court not having been properly determined, or not having been observed.

27. (1.) Commissions under this Act constituting Special Commission courts shall be in the prescribed form and be issued and superseded in the prescribed manner.

(2.) If any member of a Special Commission court dies, or it appears to the Lord Lieutenant that from illness or some reasonable cause it is necessary that another judge should be appointed in the place of a member of a

Special Commission court, the Lord Lieutenant may, if he thinks it expedient so to do, direct a supplemental commission to be issued in the prescribed form and manner, appointing the next judge on the rota who is not ineligible to fill the vacancy in such court.

(3.) Subject to the provisions of this Act, and for the purpose of the trial of any persons charged before them, a Special Commission court shall have all the powers and jurisdiction of Her Majesty's High Court of Justice in Ireland, and all the same powers and jurisdiction as if it were a court of assize, and court of oyer and terminer, and a court of gaol delivery, trying with a jury an offender indicted before such court, and shall have all the powers of a petty jury at such court, and shall be a superior court of record, and the same intendment shall be made in respect of all orders, writs, and process made by and issuing out of such Special Commission court, as if it were a superior court of record acting according to the course and by the authority of the common law.

(4.) All the members of a Special Commission court shall be present at the hearing and determination of the case of a person tried before such court, but, save as aforesaid, the jurisdiction of the court may be exercised by any of such members, and any act of the court shall not be invalidated by reason of any vacancy among the members.

(5.) Any offence with which a person brought for trial before a Special Commission court, in pursuance of this Act, is charged, shall be deemed to have been committed at some place within the jurisdiction of such court.

(6.) During such time as a person is subject, in pursuance of a warrant under this Act, to be tried by a Special Commission court for any offence, he shall not be liable to be tried by any other court for the same offence.

(7.) The trial by a Special Commission court of a person in pursuance of a warrant under this Act shall begin at such time within two months from the date of the warrant as may be ordered by the Lord Lieutenant, unless such trial is postponed by the court in the prescribed manner on the request of such person, or on account of the illness or absence of a witness, or on account of a vacancy in the court, or of the illness of such person, or some other sufficient cause, or unless the trial of such person, when commenced, has been discontinued on account of a vacancy in the court or the illness of such person, or some other sufficient cause.

(8.) Where a trial of a person is postponed or discontinued, the trial of such person may take place before the same court or any other Special Commission court, and shall take place as

soon as may be and within the prescribed time.

(9.) In the event of a trial of a person which has been postponed or discontinued taking place before the same Special Commission court, the prescribed notice shall be given of such trial, and in the event of such trial taking place before another Special Commission court, a new warrant shall be issued for the trial of such person, and such warrant shall not be invalidated by reason only that it is issued after the expiration of two months from the date of such person being committed for trial.

(10.) A commission appointing a Special Commission court shall not be superseded or affected by the issue of another like commission, or of any commission of assize, oyer and terminer, gaol delivery, or other commission whatsoever, whether to the same or any other persons, nor shall the sitting or jurisdiction of such court be affected by the sitting of any such commission or of the High Court of Justice.

(11.) The number of judges sitting as the Court of Criminal Appeal under this Act to hear any case shall be such uneven number as, subject to the provisions of this Act, the Lord Chancellor may from time to time appoint, but if during the hearing of any case any judge so sitting dies or becomes unable to act, the whole case shall be again heard.

(12.) Sentence of death passed by a Special Commission court shall be carried into effect in the county or place where the trial is held by the sheriff having jurisdiction therein, or in such other place and by such other sheriff or officer as the Lord Lieutenant may direct.

(13.) The indictment against any person brought for trial before a Special Commission court shall be prepared in the prescribed manner, and shall be in the prescribed form, and shall be of the same effect as if it were, and shall, so far as circumstances may admit, be deemed for all the purposes of the trial to be, an indictment found by a grand jury; and the proceedings before a Special Commission court shall, so far as circumstances may admit, be conducted in like manner as the proceedings on the trial of an indictment before a court of oyer and terminer, and the court shall have the same power of amending any indictment or other document or proceeding which a court of oyer and terminer has.

(14.) An objection to the jurisdiction of a Special Commission court to try a person in pursuance of a warrant under this Act shall not be entertained by reason only of any want of form in the warrant or of any mistake in the name or description of such person in the warrant if it is shown that the person tried is the

person to whom the warrant relates; and an objection to the proceedings of such court for any want of form on the trial of any person shall not be entertained, if no injustice was thereby done to such person.

(15.) Lists of the names of all persons convicted by a Special Commission court under this Act, with the dates of their convictions and the offences of which they have respectively been convicted, shall from time to time be laid before both Houses of Parliament at the following times, that is to say, a list of such names shall be laid before Parliament within seven days after the commencement of each Session of Parliament, and subsequent lists at intervals of not more than three months during the continuance of each Session. Every list after the first list shall contain only the names of persons convicted since the previous list.

(16.) The Lord Lieutenant shall from time to time provide for the payment of the reasonable expenses of a person coming to the place at which he is to be tried before a Special Commission court in any case where he was admitted to bail and is to be tried beyond the limits of the county in which he was committed for trial.

(17.) The prescribed Crown Solicitor, or other prescribed officer, under the direction of the Attorney General, shall provide, when necessary, for advancing money for enabling a person about to be tried before a Special Commission court, and the witnesses required for the defence of such person, to attend the trial.

28. The rules in the first schedule to this Act with respect to procedure on appeals under this Act to the Court of Criminal Appeal and the other matters therein mentioned shall have the same effect as if enacted in the body of this Act.

29. There shall be paid out of the Consolidated Fund such allowances to judges and chairmen of counties, and there shall be paid out of moneys provided by Parliament such allowances to officers and other persons acting in pursuance of this Act, and such expenses incurred in reference to any court established or exercising jurisdiction under this Act, and such expenses of persons charged, counsel, and witnesses, payable in pursuance of this Act, as the Lord Lieutenant, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appoint.

30. The Lord Lieutenant may, from time to time, by and with the advice of the Privy Council make, and when made revoke, add to,

and alter rules in relation to the following matters:—

- (1.) For adapting the procedure on and preliminary to the trial of criminal cases, including the forms of indictment and other matters, to a Special Commission court under this Act; and
- (2.) In relation to the procedure on appeals from a Special Commission court under this Act, and in relation to the sittings of the Court of Criminal Appeal under this Act; and
- (3.) In the case of a trial before a Special Commission court, in relation to the sitting of such court in any place, and to the nomination of officers of such court; and
- (4.) In the case of a trial before a Special Commission court, or the case where a special jury is required or where the venue is changed in relation to the attendance, authority, and duty of sheriffs, coroners, justices, gaolers, constables, officers, ministers, and persons, the removal and custody of prisoners, the alteration of any writs, precepts, inquisitions, indictments, recognizances, proceedings, and documents, the transmission of inquisitions, indictments, recognizances, and documents, and the expenses of prosecutors and witnesses, and the carrying of sentences into effect; also, in the case where a special jury is required, the number of jurors to be returned on any panel; and
- (5.) In relation to forms for the purposes of this Act, and to any matter by this Act directed to be prescribed; and
- (6.) In relation to any matters which appear to the Lord Lieutenant, by and with the advice aforesaid, to be necessary for carrying into effect the provisions of this Act; and any rules made in pursuance of this Act shall be judicially noticed and be of the same validity as if they were contained in this Act.

31. Any powers or jurisdiction conferred by this Act on any court or authority in relation to any offence or matter shall be deemed to be in addition to and not in derogation of any other powers or jurisdiction of any court or authority subsisting at common law or by Act of Parliament in relation to such offence or matter:

Provided that no person shall be tried or punished twice for the same offence.

32. No agreement or combination which, under the Trade Union Acts, 1871 and 1876, or the Conspiracy and Protection of Property Act, 1875, is legal, shall be deemed to be an offence against this Act.

33. Nothing in this Act shall render unlawful any political or social association for such objects, and acting by such means as, under this Act or otherwise, are not unlawful, nor shall membership of such an association be deemed to be an offence against this Act.

34. The expression "unlawful association" means an association formed:—

- (a.) for the commission of crimes; or
- (b.) carrying on operations for or by the commission of crimes; or
- (c.) for encouraging or aiding persons to commit crimes;

and the expression "crime" for the purposes of this section means any offence against this Act, and also any crime punishable on indictment by imprisonment with hard labour, or by any greater punishment.

35. In this Act unless the context otherwise requires—

The expression "Lord Lieutenant" means the Lord Lieutenant of Ireland or other Chief Governor or Governors of Ireland for the time being.

The expression "county" includes a county of a city and a county of a town and city and county.

The expression "Attorney General" includes in the case of any vacancy or inability to act the Solicitor General.

The expressions "arms" and "ammunition" respectively have the same meaning as in the Peace Preservation (Ireland) Act, 1881.

The expression "prescribed" means prescribed by rules to be made by the Lord Lieutenant in manner provided by this Act.

The expression "committed for trial" means a person committed to gaol to be there kept until his trial for an offence, or admitted to bail on the condition of his appearing to take his trial for any offence.

The expression "aggravated act of violence against the person" means an assault which either causes actual bodily harm or grievous bodily harm, or is committed with intent to cause grievous bodily harm.

The expression "attack on a dwelling house" means any crime cognisable by law involving the breaking into, firing at, or otherwise assaulting or injuring a dwelling house.

The expression "resident magistrate" means a magistrate appointed in pursuance of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter thirteen, inti-

tuled "An Act to consolidate the laws relating to the constabulary force in Ireland," and of the Acts amending the same, and includes any divisional justice of the police district of Dublin metropolis.

The expression "inspector of constabulary" means a county inspector of the Royal Irish Constabulary, and includes an inspector of the Dublin metropolitan police, and the expression "sub-inspector of constabulary" means a sub-inspector of the Royal Irish Constabulary.

The expression "judges of the Supreme Court of Judicature" means the judges of Her Majesty's Court of Appeal and of Her Majesty's High Court of Justice in Ireland other than the Judicial Commissioner of the Irish Land Commission.

36. This Act may be cited as the Prevention of Crime (Ireland) Act, 1862.

37. This Act shall continue in force until the expiration of three years next after the passing thereof, and to the end of the then current session of Parliament.

Provided, that the expiration of this Act shall not affect the validity of anything done in pursuance of this Act, and any person convicted under this Act may be punished as if this Act continued in force, and all appeals, prosecutions, and other legal proceedings pending under this Act at the time of the expiration thereof may be carried on, completed and carried into effect, and the sentences carried into execution, as if this Act had not expired.

SCHEDULES.

FIRST SCHEDULE.

RULES FOR APPEALS TO THE COURT OF CRIMINAL APPEAL.

(1.) Notice of the appeal shall be given within seven days after the day on which the appellant was sentenced by the Special Commission Court, or such further time as may be allowed by the said Special Commission Court, or by the Court of Criminal Appeal.

(2.) The said notice shall be served in the prescribed manner on the master of the Crown Office, or other prescribed person (who is in this Schedule included in the term Master of the Crown Office), but such notice shall not be invalidated by any informality in the procedure.

(3.) The master of the Crown Office shall forthwith in the prescribed manner give notice to the Attorney-General, and to the Special Commission court before which the appellant was tried, and the latter court shall forthwith forward in the prescribed manner for the use of the Court of Criminal Appeal copies of the shorthand writer's notes, and all indictments, documents, and things connected with the case.

(4.) The master of the Crown Office shall forthwith give notice to the judges whose duty it is, according to the rota, to sit in the Court of Criminal Appeal, and those judges shall, notwithstanding any vacation, forthwith proceed to hold a court, and hear and determine the appeal.

(5.) Unless the Court of Criminal Appeal on the application of the appellant, or of the Attorney-General, for special reason otherwise orders, the court shall be held within fourteen days after the day on which the appellant was sentenced, and shall sit from day to day to hear the appeal.

(6.) The appeal shall be heard in open court in the presence of the appellant, and the appellant may appear by counsel or solicitor.

(7.) The court may re-hear the case by the reading of the evidence as contained in the shorthand writer's notes, and may permit to be called or call any new witness, and may recall any witness who gave evidence at the trial, and may either examine such witness or let him be examined and cross-examined by or on behalf of the appellant and the prosecutor.

(8.) During the time allowed for an appeal and while an appeal is pending a sentence shall not be carried into execution, but the appellant shall be detained in custody in like manner as if he were awaiting his trial; and he shall be brought before the court in accordance with the prescribed rules, and the master of the Crown Office shall give the prescribed notice of the appeal to the sheriff, gaoler, and other persons concerned in the execution of the sentence or the custody of the appellant, and shall also give such notice of the result of the appeal as may be necessary.

for carrying into effect the final judgment of the court.

(9.) Where a person convicted by a Special Commission court is in custody and without legal assistance, and is desirous to appeal, it shall be the duty of the governor or other chief officer of the prison in which he is con-

fined to assist him in making out and forwarding within due time a notice of appeal to the proper officer in accordance with this Act.

(10.) An appellant shall be entitled, on application, to have a copy of the shorthand writer's notes, free of charge.

SECOND SCHEDULE.

Column 1.

County of Antrim.
County of Cork.
County of Dublin.
County of Galway.
County of Kilkenny.
County of Limerick.
County of Waterford.

Column 2.

County of the Town of Carrickfergus.
County of the City of Cork.
County of the City of Dublin.
County of the Town of Galway.
County of the City of Kilkenny.
County of the City of Limerick.
County of the City of Waterford.

THIRD SCHEDULE.

ALIEN ACT.

COPY OF ACT REFERRED TO.

ANNO UNDECIMO

VICTORIÆ REGINÆ.

C A P. XX.

An Act to authorise for One Year, and to the end of the then next Session of Parliament, the Removal of Aliens from the Realm.

(9th June 1848.)

Power to Secretary of State or Lord Lieutenant of Ireland to order Aliens to depart this Realm.

WHEREAS it is expedient, for the due Security of the Peace and Tranquility of this Realm, that Provision should be made, for a Time to be limited, respecting Aliens arriving or resident in this Kingdom: Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That when and so often as One of Her Majesty's Principal Secretaries of State in that Part of the United Kingdom called Great Britain, or the Lord Lieutenant or other Chief Governor or Governors in that Part of the United Kingdom called Ireland, shall have Reason to believe, from Information given to him or them respectively, in Writing, by any Person subscribing his or her Name and Address thereto, that for the Preservation of the Peace and Tranquility of any Part of this

Realm it is expedient to remove therefrom any Alien or Aliens who may be in any part of this Realm, or who may hereafter arrive therein, it shall be lawful for such Secretary of State in that Part of the United Kingdom called Great Britain, and for such Lord Lieutenant or other Chief Governor or Governors in that Part of the United Kingdom called Ireland, by Order under his or their Hand or Hands respectively, to be published in the London or Dublin Gazette, as the Case may be, to direct that any such Alien or Aliens who may be within Great Britain or Ireland respectively, or who may hereafter arrive therein, shall depart this Realm, within a Time limited in such Order; and if any such Alien shall knowingly and wilfully refuse or neglect to pay due Obedience to such Order, or shall be found in this Realm or any Part thereof, contrary to such Order, after such Publication thereof as aforesaid, and after the Expiration of the Time limited in such Order, it shall be lawful for any of Her Majesty's Principal Secretaries of State, or for the Lord Lieutenant or other Chief Governor or Governors of Ireland, or his or their Chief Secretary, or for any Justice of the Peace, or for the Mayor or Chief Magistrate of any City or Place, to cause every such Alien to be arrested, and to be committed to the Common Gaol of the County or Place where he or she shall be so arrested, there to remain, without Bail or Mainprize, until he or she

If Alien willfully refuse to such Order, they are committed to Gaol until he or she is charged with the offence of being sent out of the Realm.

shall be taken in charge for the Purpose of being sent out of the Realm, under the Authority herein-after given.

II. And be it enacted, That every such Alien so knowingly and wilfully refusing or neglecting to pay due Obedience to any such Order as aforesaid shall be guilty of a Misdemeanor, and being convicted thereof shall, at the Discretion of the Court, be adjudged to suffer Imprisonment for any Time not exceeding One Month for the First Offence, and not exceeding Twelve Months for the Second and any subsequent Offence.

III. And be it enacted, That it shall be lawful for any One of Her Majesty's Principal Secretaries of State, or the Lord Lieutenant or Chief Governor or Governors of Ireland, in any Case in which any Alien shall be found in this Realm after the Expiration of the Time limited in such Order, and whether he or she shall or shall not have been arrested or committed for Refusal or Neglect to obey such Order, or convicted of such Refusal or Neglect, and either before or after such Alien shall have suffered the Punishment inflicted for the same, by Warrant under his Hand and Seal, to give such Alien in charge to One of Her Majesty's Messengers, or to any other Person or Persons to whom he shall think proper to direct such Warrant, in order to such Alien being conveyed out of the Kingdom; and such Alien shall be so conveyed accordingly: Provided always, that where such Alien (not having been convicted as aforesaid) shall allege any Excuse for not complying with such Order, or any Reason why the same should not be enforced, or why further Time should be allowed him or her for complying therewith, it shall be lawful for the Lords of Her Majesty's Privy Council in Great Britain or in Ireland, as the Case may be, to judge of the Sufficiency of such Excuse or Reason, and to allow or disallow the same either absolutely or on such Condition as they shall think fit; and where such Alien shall be in Custody under such Warrant of any of Her Majesty's Secretaries of State or of the Lord Lieutenant or other Chief Governor or Governors of Ireland as aforesaid, the Messenger or other Person in whose Custody he or she shall be, forthwith upon its being signified to him that such Excuse or Reason is alleged by such Alien, shall make known the same to such Secretary of State, or to the Lord Lieutenant or other Chief Governor or Governors of Ireland, as the Case may be, who, upon receiving such Notification, or in any Case in which he or they shall be informed that any such Excuse or Reason is alleged by or on behalf of any Alien to quit the Realm, shall forthwith suspend the Execution of such Warrant until the

Matter can be inquired into and determined by the said Lords of Her Majesty's Privy Council; and such Alien, if in Custody under any such Warrant, shall remain in such Custody, or if not in Custody may be given in charge by any such Warrant as aforesaid, and shall remain in Custody until the Determination thereon shall be made known, unless in the meantime such Secretary of State, or the Lord Lieutenant or other Chief Governor or Governors of Ireland, shall consent to or the said Lords shall make Order for the Release of such Alien, either with or without Security: Provided always, that the Lords of Her Majesty's Most Honourable Privy Council shall cause to be delivered to such Alien, in Writing, a general Summary of the Matters alleged against him or her, and shall allow him or her reasonable Time to prepare his or her Defence; and that it shall be lawful for him or her to summon and examine upon Oath Witnesses before the said Lords of Her Majesty's Most Honourable Privy Council, and to be heard before them, by himself or herself, or his or her Counsel, in support of the Excuse or Reason by him or her alleged.

IV. Provided always, and be it enacted, That in every Case in which Power is given by this Act to commit any Alien to Gaol without Bail or Mainprize it shall and may be lawful for any Justices of Her Majesty's Courts of Record at Westminster or in Dublin, or for any of the Barons in Great Britain or Ireland, being of the Degree of the Coif, or for the Lord Justice Clerk or any of the Commissioners of Justiciary in Scotland, if upon Application made he shall see sufficient Cause, to admit such Person to Bail, he or she giving sufficient Security for his or her Appearance to answer the Matters alleged against him or her.

V. Provided nevertheless, and be it enacted, That where any Alien who shall have been committed under this Act to remain until he or she shall be taken in charge for the Purpose of being sent out of the Realm, shall not be sent out of the Realm within One Calendar Month after such Commitment, it shall in every such Case be lawful for any of the Justices of Her Majesty's Courts of Record at Westminster or in Dublin, or for any of the Barons in Great Britain or Ireland, being of the Degree of the Coif, or for the Lord Justice Clerk or any of the Commissioners of Justiciary in Scotland, or for any Two of Her Majesty's Justices of the Peace in any Part of the United Kingdom, upon Application made to him or them by or on the Behalf of the Person so committed, and upon Proof made to him or them that reasonable Notice of the Intention to make such Application had been given to some or One of Her Majesty's Prin-

Privy Council shall cause a Summary of Matters alleged against Alien to be delivered to him, &c.

Judges may admit Aliens to Bail in all Cases, if they see sufficient Cause.

Where Alien shall not have been sent out of the Realm within One Month after Commitment, Judges, &c. empowered, where application has been made, to continue in, or discharge such Alien out of, Custody.

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cial Secretaries of State in Great Britain, or to the Lord Lieutenant or Chief Governor or Governors of Ireland, or his or their Chief Secretary, according to his or their Discretion, to order the Person so committed to be continued in or discharged out of Custody.

Act not to extend to Ambassadors, &c., or Aliens who have resided in the Kingdom for Three Years.

VI. Provided always, and be it enacted, That nothing in this Act contained shall affect any Foreign Ambassador or other Public Minister duly authorised, nor any Person belonging to the diplomatic or domestic Establishment of any such Foreign Ambassador or Public Minister, registered as such according

to Law, or being actually attendant upon such Ambassador or Minister, nor any Alien under the Age of Fourteen Years, or who shall have been residing within this Realm for Three Years next before the passing of this Act.

VII. And be it enacted, That this Act shall continue in force for One Year from the passing thereof, and until the End of the then next Session of Parliament.

VIII. And be it enacted, That this Act may be repealed or amended in the present Session of Parliament.

CHAP. 26.

Election of Representative Peers (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Reduction of period between tests of writ and election.*
2. *Short title.*

An Act to amend the Law relating to the Election of Lords Temporal to serve in Parliament for Ireland.

(12th July 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. In the event of any future election of a Lord Temporal to serve in Parliament for Ireland, the period of fifty-two days from the teste of the writs for such election, within which it is required by the Act of Union of Great Britain and Ireland that the same shall be returned into the Crown Office of Ireland, shall be reduced to a period of thirty days.

2. This Act may be cited as the Election of Representative Peers (Ireland) Act, 1882.

CHAP. 27.

Highway Rate Assessment and Expenditure Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Power to rate and compound with owners of small tenements.*
4. *Valuation lists conclusive for highway rate.*
5. *Provision for balances of outgoing surveyors.*
6. *Power to maintain mile stones and to fence.*
7. *Waywarden's rate accounts.*
8. *Recovery and payment of certified balances.*
9. *Provision as to excluded parts of parishes.*
10. *Interpretation.*

An Act to extend certain Provisions of the Poor Rate Assessment and Collection Act, 1869, to the Highway Rate, and for other purposes.

(12th July 1882.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Highway Rate Assessment and Expenditure Act, 1882.

2. This Act shall not extend to Scotland or to Ireland.

3. Where in any parish the vestry have, under section four of the Poor Rate Assessment and Collection Act, 1869, ordered or shall hereafter order that the owners of all rateable hereditaments to which section three of that Act extends shall be rated to the poor rate in respect of such hereditaments instead of the occupiers, such order shall be deemed to extend to and include the highway rate, and whilst such order is in force the respective owners of such hereditaments shall be rated and assessed instead of the occupiers thereof to the highway rates made after the passing of this Act for any highway parish which is co-extensive with such parish or with any part thereof, and to which otherwise such occupiers might by law be rated; subject nevertheless to the abatements or deductions and to the conditions specified in sections four and five of the said Act; and for the purposes of this section the term "overseers" in section four of the said Act shall be construed to mean "surveyor of highways or other person authorised by law to make and levy a highway rate."

The surveyor of highways, or other person authorised by law to make and levy a highway rate, shall have the same powers, remedies, and privileges for recovering the rates made under this Act upon owners, as the overseers of the poor have under the said Poor Rate Assessment and Collection Act, 1869, for the recovery of a poor rate, and when the overseers are required by law to levy the highway rate, and such rate applies to the whole parish, they may levy the same as part of the poor rate.

Section thirty of the Highway Act, 1835, relating to the composition for rates in certain cases under local Acts is hereby repealed.

4. In every highway rate made after the passing of this Act the several hereditaments included therein and assessable to the poor rate shall be rated according to the annual

rateable value thereof appearing in the valuation list for the time being in force in the parish which is co-extensive with or includes the highway parish to which the highway rate relates, and where any valuation list has been amended on objection pursuant to section one of the Union Assessment Committee Amendment Act, 1864, the assessment committee shall give notice of such amendment to the surveyor of highways or other person authorised to make and levy the highway rate, who shall thereupon alter the then current highway rate accordingly.

5. If the rates levied by a surveyor of highways, together with any other sums received by him during his term of office, prove insufficient to meet the whole of the expenditure lawfully incurred by him, and such deficiency has not arisen from any neglect or default on his part, his successor in office may reimburse to him the amount of such deficiency.

6. The expenses incurred by a highway authority in maintaining, replacing, or setting up mile stones on any highway, and in fencing by posts and rails or otherwise a highway where such fencing is required for the protection of persons travelling thereon against danger, shall be a lawful charge upon the highway rate.

7. The provisions of section nine of the Highways and Locomotives (Amendment) Act, 1878, as amended by the District Auditors Act, 1879, in relation to the audit of the accounts of highway authorities and their officers shall extend to the accounts of a waywarden of any highway parish within a highway district with respect to the highway rates levied by him.

8. Moneys, goods, or chattels certified by an auditor at a highway audit to be due from any person shall be recoverable by the like process and with the like powers as in the case of moneys, goods, or chattels certified at the audit of the poor rate accounts, and where an auditor shall take proceedings for the recovery of any moneys, goods, or chattels certified at a highway audit or shall lay any information for a penalty in consequence of the default of any officer or other person to attend any such audit or to produce the proper accounts or vouchers, or to make or sign the proper declaration before him, the costs incurred by the auditor, when not recovered from the defendant, shall, if the Local Government Board consent thereto, be paid to the auditor by the highway authority, and may be recovered from such authority in a summary manner.

The moneys certified at a highway audit shall, where there is a treasurer of the highway authority, be paid to such treasurer, and where

there is no such officer to the highway authority for the time being; and the goods or chattels so certified shall be delivered over to the person authorised to receive the same.

9. Where at the time of the passing of this Act part of a parish is excluded from an urban sanitary district, but such excluded part is for purposes connected with the repairs of highways and the payment of highway rates treated as forming part of the district, the owners and ratepayers of the excluded part may by resolution passed at a meeting to be convened and conducted in manner provided by Schedule Three of the Public Health Act, 1875, decide that such part shall be a highway parish, and if the resolution is approved by an order of the Local Government Board the excluded part shall from a date to be fixed by the said order be for all purposes connected with highways, surveyors of highways, and highway rates, considered and treated as a separate highway parish.

10. In this Act—

“Highway audit” means the audit of the accounts of a highway authority or their officers or of any waywarden:

“Highway authority” means as respects a highway district, the highway board, and as respects a highway parish not included in a highway district, the surveyor or surveyors or other officers performing similar duties:

“Highway rate” means a rate made for the repairs of the highways and includes any separate rate made to meet the orders or precepts of a highway authority:

“Parish” means a place for which a separate poor rate can be made:

“Highway parish” means a place separately maintaining its own highways, and, in a highway district, a place for which a waywarden may be elected or a separate highway rate be made.

CHAP. 28.

Consolidated Fund (No. 4) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Issue of 5,703,891l. out of the Consolidated Fund for the service of the year ending 31st March 1883.*
2. *Power to the Treasury to borrow.*
3. *Short title.*

An Act to apply the sum of five million seven hundred and three thousand eight hundred and ninety-one pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three.

(24th July 1882.)

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and

consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three the sum of five million seven hundred and three thousand eight hundred and ninety-one pounds.

2. The Commissioners of the Treasury may borrow from time to time, on the credit of the said sum, any sum or sums not exceeding in the whole the sum of five million seven hundred and three thousand eight hundred and ninety-one pounds, and shall repay the moneys so borrowed, with interest not exceeding five

pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any sums so borrowed shall be placed to the credit of the account of Her Majesty's Exche-

quer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

3. This Act may be cited as the Consolidated Fund (No. 4) Act, 1882.

CHAP. 29.

County Court Amendment (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Application of Act.*
2. *Short title.*
3. *Interpretation of terms.*
4. *Any person dissatisfied with any adjudication may appeal to the judge of assize, who is hereby authorised to hear and determine the same.*
5. *Appeal to be by notice served within four clear days after close of sitting of civil bill court. Proof of service by affidavit.*
6. *Notice of appeal shall be a stay of execution in case a recognizance be entered into as provided herein, or the amount lodged. Reception of recognizance by clerk of peace conclusive evidence that the provisions in reference thereto complied with.*
7. *Appeal from Recorder of Dublin.*
8. *Execution after notice of entering into recognizance to render party a trespasser.*
9. *Repeal and re-enactment of certain statutable provisions.*
10. *Extension of existing jurisdiction of county courts under 40 & 41 Vict. c. 56. s. 33.*
11. *Appeals under jurisdiction conferred by foregoing section.*
12. *Not to affect appeals under 33 & 34 Vict. c. 46., 44 & 45 Vict. c. 49.*

SCHEDULE.

An Act to amend the Acts relating to the County Courts in Ireland, and to make better provision for Appeals under the said Acts.

(24th July 1882.)

WHEREAS it is expedient to amend the law and procedure regulating appeals from county courts in Ireland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall extend to Ireland only.
2. This Act may be cited as the County Court Amendment (Ireland) Act, 1882.
3. The terms "county court judge," "clerk of the peace," "civil bill court," "county," and "borough" in this Act shall have the

same meaning as is provided by the fortieth and forty-first Victoria, chapter fifty-six.

4. Any person dissatisfied with any decree, dismiss, or order, whether adverse to him or in his favour, pronounced by any county court judge, in the exercise by him of any jurisdiction at law under the several Acts conferring jurisdiction on county or civil bill courts in Ireland, may, in manner herein provided, appeal therefrom to the judge of assize for the respective counties in which such decree, dismiss, or order shall have been made or pronounced; and such judge of assize is hereby empowered and required to hear such suit or matter, and to make such decree or order thereon, and issue such execution in all respects as is empowered by the several statutes in that behalf by the said county court judges to be awarded, and the said judge of assize may upon any such appeal adjourn or remit the suit or matter back to the county court judge with such declarations or directions as he shall think proper, and may upon said appeal make such order with reference to the costs thereof

as he shall think fit. Nothing contained in this section shall apply to any suit or matter instituted under the equitable jurisdiction vested in the county courts by the County Officers and Courts (Ireland) Act, 1877, as amended by this Act.

5. Every appeal under this Act shall be by notice signed by the party appealing or his solicitor in the form or to the like effect in the schedule to this Act annexed. Such notice shall be lodged with the clerk of the peace and shall be served within four clear days from the close of the sitting of the county court for the hearing of civil bills at which the decree or adjudication appealed from shall have been made, and shall be to the next assize to be held after the said period. Service of such notice shall be effected on the opposing party or his solicitor personally, or by leaving same at their or either of their residences with a clerk, servant, wife, or child, or other person therein over the age of sixteen years; and proof of such service shall be by affidavit made before any justice of the peace, which he is hereby empowered to take, or before the clerk of the peace; and on such proof being given the clerk of the peace shall enter the same for hearing before the judge of assize, and such entry shall be *prima facie* proof of due service thereof before such judge of assize.

6. A notice of appeal shall be a stay of execution, provided a recognizance with sufficient sureties conditioned to pay the sum recovered and costs, or costs awarded in case no sum is recovered if a defendant appealing, or to pay the costs awarded where the appellant was a plaintiff in the county court, and to pay the costs of the appeal in case the adjudication appealed from was in favour of the party appealing, be entered into within the said period of four clear days before the clerk of the peace or any justice of the peace of the county, or in case the party appealing desire to dispense with a recognizance by lodgment within the like period of the amount of said sums respectively with the clerk of the peace, who shall retain the same and dispose thereof as he shall be directed by the judge of assize; and the recognizance herein provided may be in the Form 31, Schedule C. of the fourteenth and fifteenth Victoria chapter fifty-seven, or to the like effect, and with such variation as is by this Act provided; and the reception of such recognizance by the clerk of the peace shall be conclusive evidence that the several provisions herein enacted in reference thereto have been complied with, and in case any such recognizance shall have been taken by any justice of the peace, the same shall be returned to the

clerk of the peace within two days after same shall have been taken or acknowledged: Provided always, that nothing herein contained shall affect the provisions of the sixty-ninth section of the twenty-third and twenty-fourth Victoria, chapter one hundred and fifty-four.

7. Appeals in civil bill cases from the Recorder of Dublin shall be to the court to which such appeals lie at the time of the passing of this Act, but in other respects shall be regulated by the enactments contained in this Act.

8. In case any decree, dismiss, or adjudication, notwithstanding notice of appeal and of the entry into such recognizance or of the making of such lodgment as is herein provided, shall be executed, the party so executing the same or continuing in possession of any goods thereafter shall be deemed to be a trespasser, and may be proceeded against accordingly.

9. From and after the passing of this Act sections one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, and one hundred and thirty of the fourteenth and fifteenth Victoria, chapter fifty-seven, are hereby repealed; and it is hereby further enacted that every decree, dismiss, or adjudication made under section one hundred and fifty of the fourteenth and fifteenth Victoria, chapter fifty-seven, may be appealed from as in this Act provided. The fifty-fifth section of the County Officers and Courts (Ireland) Act, 1877, is hereby repealed.

10. The several civil bill courts in Ireland shall, in addition to the jurisdiction now possessed by them, have and exercise all the power and authority of the High Court of Chancery in the suits and matters herein-after mentioned, that is to say, where the subject thereof shall not exceed in amount or value, so far as it consists of personalty, five hundred pounds, and so far as it consists of lands, shall not exceed the annual value of thirty pounds; (that is to say,)

- (a.) In suits by executors or administrators for the administration of assets;
- (b.) In suits for the setting aside, cancelling, or reforming any deed, agreement, assurance, or conveyance of any property on the ground of fraud or mistake.

11. Every order or adjudication made under the jurisdiction conferred by the foregoing section of this Act shall be subject to appeal as is provided by Part II. of the County Officers and Courts (Ireland) Act, 1877.

12. Nothing in this Act shall be deemed to include any appeal brought under the provisions of the Landlord and Tenant (Ireland) Act, 1870, or the Land Law (Ireland) Act,

1881, and appeals thereunder shall be brought in manner and to the Court provided by the forty-seventh section of the Land Law (Ireland) Act, 1881.

SCHEDULE.

NOTICE OF APPEAL.

Division of County of County Court.
 Plaintiff
 Defendant

TAKE NOTICE that I hereby appeal against the (*here state whether decree, order, dismiss, as the case may be,*) herein to the next going judge of assize in and for the county of

Dated this day of
 (Signed)

To the Clerk of the Peace, The (Plaintiff or Defendant,
as the case may be,) and his Solicitor.

CHAP. 30.

Baths and Wash Houses Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Amendment of 9 & 10 Vict. c. 74. s. 27.*
3. *Amendment of 9 & 10 Vict. c. 74. s. 24*

An Act to amend the Baths and Wash Houses Acts. (24th July 1882.)

WHEREAS it is desirable to give increased facilities to local authorities for providing baths and wash houses within easy and convenient reach :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Baths and Wash Houses Act, 1882, and

shall be read as one with the Act of the ninth and tenth years of the reign of Her present Majesty, chapter seventy-four, in this Act called "the principal Act."

2. Section twenty-seven of the principal Act shall be amended by the addition of the words "or in the immediate neighbourhood of such "borough or parish" to the words "in any "such borough or parish" wherever such last-mentioned words occur in the said section.

3. The power conferred by section twenty-four of the principal Act to purchase or rent lands for the purposes of that Act shall extend to lands in the immediate neighbourhood of such borough or parish as is therein referred to.

CHAP. 31.

Inferior Courts Judgments Extension Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation of terms.*
3. *Registrar of Inferior Court to grant certificate of judgment.*
4. *Registration of certificate shall have the effect of a judgment of the Court in which it is registered.*
5. *Execution of judgments.*
6. *Jurisdiction over registered judgments limited to execution.*
7. *Cancellation of registry.*
8. *Costs not to be allowed in actions on judgments unless by order of Court.*
9. *Existing limits of local jurisdiction shall not be exceeded.*
10. *Act not to be applied in certain cases.*
11. *Rules.*

SCHEDULE.

An Act to render Judgments obtained in certain Inferior Courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom. (24th July 1882.)

WHEREAS it is expedient to extend the principle of the Judgments Extension Act, 1868, to the judgments of certain inferior courts of Great Britain and Ireland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Inferior Courts Judgments Extension Act, 1882.

2. In this Act the following words and expressions shall have the interpretations and meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction; (that is to say,)

The expression "judgment" shall include decree, civil bill decree, dismiss, or order:

The expression "inferior courts" shall include County Courts, Civil Bill Courts, and all Courts in England and Ireland having jurisdiction to hear and determine civil causes, other than the High Courts of Justice; and in Ireland, Courts of Petty Sessions and the Court of Bankruptcy; and in Scotland shall include the Sheriffs Courts and the Courts held under the Small Debts and Debts Recovery Acts:

The expression "registrar of an inferior court" shall include the sheriff clerk of a

Sheriffs Court in Scotland, and any officer fulfilling the duties of a registrar in an inferior court in England; and in Ireland shall include the clerk of the peace or other officer whose duty it is to enter the judgment, decree, or order of the court:

"Prescribed" means prescribed by rules made under the provisions of this Act:

The expression "person" shall include any party or parties to a cause in any inferior court in England, Scotland, or Ireland:

The expression "plaintiff" shall include pursuer, complainer, or any person at whose instance any action or proceeding in an inferior court is instituted; and the expression "defendant" shall include defender, respondent, or other person against whom any such action or proceeding is directed:

The expression "action" shall mean the action or other proceeding in which any judgment was pronounced; and the expression "summons" shall mean the summons or other initial writ in such action.

3. Where judgment shall hereafter be obtained or entered up in any of the inferior courts of England, Scotland, or Ireland respectively for any debt, damages, or costs, the registrar of such inferior court or other proper officer shall, after the time for appealing against such judgment shall have elapsed, and in the event of such judgment not being reversed upon appeal or of execution thereunder not being stayed, upon the application of the party who has recovered such judgment, and upon proof that the same has not been satisfied, and payment of the prescribed fee, grant a certificate in the form in the schedule to this Act annexed.

4. On the production to the registrar or other proper officer of a county court, or, in the City of London, of the City of London Court in England where a judgment has been obtained in Scotland or Ireland, or to the registrar or other proper officer of a Sheriff's Court in Scotland where a judgment has been obtained in England or Ireland, or to the registrar or other proper officer of a Civil Bill Court in Ireland where a judgment has been obtained in England or Scotland of a certificate under this Act purporting to be signed by the registrar or other proper officer of the inferior court where such judgment was obtained, such certificate shall, on payment of the prescribed fee, be registered in the prescribed form by such registrar or other proper officer to whom the same shall be produced for that purpose; and all reasonable costs and charges attendant upon the obtaining and registering such certificate shall be added to and recovered in like manner as if the same were part of the original judgment. No certificate of any such judgment shall be registered as aforesaid in any inferior court in the United Kingdom more than twelve months after the date of such judgment.

5. Where a certificate of a judgment of any of the inferior courts aforesaid has been registered under this Act, process of execution may issue thereon out of the Court in which the same shall have been so registered against any goods or chattels of the person against whom such judgment shall have been obtained, which are within the jurisdiction of such last-mentioned Court, in the same or the like manner as if the judgment to be executed had been obtained in the Court in which such certificate shall be so registered as aforesaid.

6. The courts of Great Britain and Ireland to which this Act applies shall, in so far as relates to execution under this Act, have and exercise the same control and jurisdiction over and with respect to the execution of any judgment, a certificate of which shall be registered under this Act, as they now have and exercise over and with respect to the execution of any judgment in their own courts.

7. On proof of the setting aside, or satisfaction, of any judgment of which a certificate shall have been registered under this Act, the Court in which such certificate is so registered may order the registration thereof to be cancelled.

8. In any action brought in any of the inferior courts aforesaid for the purpose of enforcing any judgment which might be registered under this Act in the country in which

such action is brought, the party bringing such action shall not recover or be entitled to any costs or expenses, unless the Court in which such action shall be brought shall otherwise order.

9. Nothing contained in this Act shall authorise the registration in an inferior court of the certificate of any judgment for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court.

Provided that where a judgment obtained in an inferior court in Scotland cannot be registered in an inferior court in England or Ireland, by reason of its being for a greater amount than might have been recovered if the action or proceeding had been originally commenced in such inferior court, it shall be competent to register a certificate of such judgment in the register directed to be kept in the Court of Common Pleas at Westminster and Dublin respectively, to be called "The Register of Scotch Judgments," by section three of the Judgments Extension Act, 1868, in the same manner, to the same effect, and subject to the same provisions, as if the said certificate had been a certificate of an extracted decret of the Court of Session, registered in the said register under the said Act.

10. This Act shall not apply to any judgment pronounced by any inferior court in England against any person domiciled in Scotland or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Scotland against any person domiciled in England or Ireland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district, nor to any judgment pronounced by any inferior court in Ireland against any person domiciled in England or Scotland at the time of the commencement of any action, unless the whole cause of action shall have arisen, or the obligation to which the judgment relates ought to have been fulfilled, within the district of such inferior court, and the summons was served upon the defendant personally within the said district.

Provided that it shall be competent to any

person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in England or Ireland, to apply for and obtain from one of the superior courts of England or Ireland a prohibition or injunction against the enforcement of such judgment, and of any execution thereupon; and that it shall be competent to any person against whom any judgment to which this Act does not apply, as aforesaid, is sought to be enforced by registration in the register of an inferior court in Scotland, to apply for and obtain from the Bill Chamber or Court of Session in Scotland suspension or suspension

and interdict of or against the enforcement of such judgment and any diligence thereon, and in any such proceeding as aforesaid the unsuccessful party may be found liable in costs.

11. Rules for the purposes of this Act may be made and altered from time to time by the like persons and in the like manner in which rules and regulations may be respectively made under and for the purposes of the County Courts Acts in England; of the Sheriffs Courts Acts in Scotland, and of the Civil Bill Courts Acts in Ireland; provided that the said rules and regulations shall not extend the jurisdiction of any inferior court.

SCHEDULE.

CERTIFICATE issued in terms of the Inferior Courts Judgment Extension Act, 1882.

I , certify that [here state name, business, or occupation, and address of person obtaining judgment, and whether Plaintiff or Defendant] on the day of 18 , obtained judgment against [here state name, business, or occupation and address of person against whom judgment was obtained, and whether Plaintiff or Defendant] in the Court of for payment of the sum of on account of [here state shortly the nature of the claim with the amount of costs (if any) for which judgment was obtained.]

[To be signed by the Registrar or other proper Officer of the Inferior Court from which the certificate issues, and to be sealed with the Seal of the Court.]

NOTE OF PRESENTATION to be appended to above Form.

The above certificate is presented by me for registration in the Court of in accordance with the provisions of the Inferior Courts Judgments Extension Act, 1882.

[Signature and address of Solicitor, Law Agent, or Creditor presenting for Registration.]

CHAP. 32.

Public Offices Site Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Purposes of Act.*
2. *Lands described in the First, Second, Third, and Fourth Schedules to vest in the Commissioners of Works.*
3. *Power to Commissioners of Works to acquire lands described in the Fifth Schedule, and any outstanding estates, &c.; and incorporation of Lands Clauses Consolidation Acts.*
4. *Mode of ascertaining consideration payable to Her Majesty in respect of Crown lands.*
5. *Terminable annuity to be paid to Commissioners of Woods in respect of lands described in the First Schedule.*
6. *Rents in respect of lands described in the First Schedule to be received by the Commissioners of Woods until 1st of January 1883.*
7. *Terminable annuity to be paid to Commissioners of Woods in respect of lands described in the Second Schedule on resumption of land revenues by the Crown.*
8. *Provision with respect to Office of Land Revenue Records and Inrolments.*
9. *Provisions with respect to St. Matthew's Chapel, Spring Gardens.*

10. *Lands to continue subject to land tax.*
11. *Extinction of rights of way and other easements.*
12. *As to rights of Metropolitan Board of Works.*
13. *Power to Commissioners to enter lands to survey and value.*
14. *Power to Commissioners to execute works.*
15. *Exemption from operation of 18 & 19 Vict. c. 122.*
16. *Expenses of carrying out the purposes of the Act.*
17. *Lands to be purchased and held subject to 15 & 16 Vict. c. 28.*
18. *Authentication of notices.*
19. *Orders of High Court may be made in chambers.*
20. *Penalty for obstructing Commissioners.*
21. *Deeds to be inrolled in Queen's Remembrancer's office.*
22. *Interpretation of terms.*
23. *Short title.*

SCHEDULES.

An Act for the acquisition of Property
and the provision of new Buildings
for the Admiralty and War Office.
(24th July 1882.)

WHEREAS it is expedient to provide fresh accommodation for the Admiralty and the War Office:

And whereas the lands required for the purposes of this Act cannot be acquired without the authority of Parliament:

And whereas duplicate plans (in this Act referred to as the "deposited plans") describing the situation of the said lands, with the houses and buildings thereon (in this Act referred to as the "prescribed lands"), with a book of reference thereto containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers thereof, have been deposited with the clerk of the peace for the county of Middlesex at his office at the Sessions House, Clerkenwell, and with the vestry clerk of the parish of Saint Martin-in-the-Fields, in the said county of Middlesex, at the vestry hall of the said parish:

And whereas the prescribed lands are divisible into five classes:—(1) Lands vested in Her Majesty as part of the hereditary land revenues of the Crown, but subject to certain outstanding leases, estates, and interests, which lands are described in the First Schedule to this Act: (2) lands vested in Her Majesty as part of the hereditary land revenues of the Crown, from which no rent is at the present time payable to Her Majesty, which lands are described in the Second Schedule to this Act: (3) lands by the Act of the session of the second and third years of the reign of His late Majesty King William the Fourth, chapter forty, vested in the Commissioners for executing the office of Lord High Admiral for the time being, and their successors in office, in trust for His said Majesty, his heirs and successors, for the public

service, which lands are described in the Third Schedule to this Act: (4) lands freely and voluntarily and without valuable consideration granted in the year one thousand eight hundred and twenty-nine, in the reign of His late Majesty King George the Fourth, by the Commissioners of Woods to His Majesty's commissioners for building new churches, which said lands, subject to a lease of the vaults under Saint Matthew's Chapel, Spring Gardens, are vested in the Vicar of the parish of Saint Martin-in-the-Fields, and are described in the Fourth Schedule to this Act: (5) lands belonging to private owners and described in the Fifth Schedule to this Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The purposes of this Act are the acquisition and appropriation of the prescribed lands for the improvement, enlargement, rebuilding, and concentration of the offices and buildings used as the Admiralty and War Office, and the constructing and doing such works and things as are conducive to the attainment of such purposes, or any of them, or incidental thereto.

2. The lands described in the First and Second Schedules to this Act shall, on and after the first day of January one thousand eight hundred and eighty-three, vest in the Commissioners of Her Majesty's Works and Public Buildings (in this Act referred to as "the Commissioners") and their successors and assigns, for all the estate and interest of Her Majesty therein, but subject to any outlying leases, interests, or estates: Provided that any such leases, interests, or estates granted by or on behalf of Her Majesty to the

Commissioners for executing the office of Lord High Admiral for the time being and their successors in office shall vest absolutely in the Commissioners and their successors and assigns; and on and after such day as aforesaid the lands described in the Third Schedule to this Act shall vest in the Commissioners, and their successors and assigns, for all the estate therein of the Commissioners for executing the office of Lord High Admiral for the time being and their successors in office; and on and after the thirtieth day of June one thousand eight hundred and eighty-three the lands described in the Fourth Schedule hereto shall vest in the Commissioner, and their successors and assigns, but subject to the said lease of the vaults under the said chapel.

3. The Commissioners may for the purposes of this Act purchase and acquire the lands described in the Fifth Schedule to this Act, and all or any outstanding estates, interests, or easements in any of the prescribed lands; and for the purposes of such acquisition and purchase the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, in this Act referred to as "The Lands Clauses Consolidation Acts," shall be incorporated with this Act, so far as the same may be applicable to and are not inconsistent with or modified by the provisions of this Act, and with the exceptions and additions and subject to the provisions following; (that is to say.)

- (1.) There shall not be incorporated with this Act the provisions relating to the sale of superfluous land, and the provisions relating to affording access to the special Act; and,
- (2.) In the construction of this Act and the said incorporated Acts this Act shall be deemed to be "the special Act," and the Commissioners shall be deemed to be "the promoters of the undertaking;" and,
- (3.) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845, shall be under the common seal of the Commissioners, and shall be sufficient without the addition of the sureties in the said section mentioned; and,
- (4.) All claims for compensation made upon the Commissioners under the provisions of this Act or any Act incorporated herewith shall, if the person claiming to be entitled to compensation has no greater interest than as tenant for a year or from year to year in the lands in respect of which the compensation is claimed, be determined in manner provided by section one hundred and twenty-one of the Lands Clauses Consolidation Act, 1845.

4. The consideration payable to Her Majesty in respect of the lands described in the First and Second Schedules to this Act shall be ascertained as follows; that is to say,

A surveyor to be appointed for the purpose by the Treasury shall, previous to the first day of June one thousand eight hundred and eighty-three, and having regard to the considerations mentioned in section sixty-three of the Lands Clauses Consolidation Act, 1845, ascertain—

- (1.) The consideration to be paid for the estate and interest of Her Majesty in the lands described in the First Schedule to this Act, distinguishing what proportion of such consideration is applicable to the Office of Land Revenue Records and Inrolments; and
- (2.) The consideration to be paid for the estate and interest of Her Majesty in the lands described in the Second Schedule to this Act.

The Commissioners shall pay all costs and expenses incurred by Her Majesty or by the Commissioners of Woods in relation to the valuation of the said lands or the purchase thereof under this Act.

5. The consideration payable to Her Majesty in respect of the lands described in the First Schedule to this Act, together with interest thereon at the rate of three-and-a-half per cent. per annum, shall be a charge upon the Consolidated Fund of Great Britain and Ireland, and shall be paid out of the said Consolidated Fund to the Commissioners of Woods by the following instalments; that is to say,

Upon the thirtieth day of June and the thirty-first day of December one thousand eight hundred and eighty-three, and upon each succeeding thirtieth day of June and thirty-first day of December, up to and inclusive of the thirtieth day of June one thousand nine hundred and seventeen, a sum of money equal in amount to one-fortieth part of the said consideration, and upon the eleventh day of September one thousand nine hundred and seventeen a sum of money equal in amount to two-fifths of one-fortieth part of the said consideration, shall be paid to the Commissioners of Woods.

The said consideration shall be accounted for and applied by the Commissioners of Woods in manner following; that is to say,

So much of each sum so to be paid as aforesaid as is equal in amount to seven four-hundredths parts of such portion of the said consideration as remains unpaid immediately before the payment of such sum shall, upon payment thereof, be deemed

to be interest upon the said portion so remaining unpaid, and be carried to the account of the income of the land revenues of the Crown, and applied as part thereof; and the residue of each sum so to be paid as aforesaid shall, upon payment thereof, be deemed to be a payment on account of the said consideration, and be carried to the account of the capital of the land revenues of the Crown, and applied as part thereof.

6. All rents in respect of any of the lands described in the First Schedule to this Act in arrear on the first day of January one thousand eight hundred and eighty-three, or accruing due in respect of such lands up to the rent day next succeeding the said first day of January one thousand eight hundred and eighty-three, shall be received by the Commissioners of Woods, and the Commissioners of Woods shall pay to the Commissioners an apportioned part of such rents in respect of the time between the said first day of January one thousand eight hundred and eighty-three and such next succeeding rent-day, and after such rent-day the said rents shall be received by the Commissioners.

7. The consideration payable to Her Majesty in respect of the lands described in the Second Schedule to this Act, together with interest thereon at the rate of three-and-a-half per cent. per annum, shall, whenever the income of the land revenues of the Crown ceases to be carried to and form part of the said Consolidated Fund, and is retained by the Crown as part of its hereditary revenues, become a charge upon the said Consolidated Fund, and shall be paid out of the said Consolidated Fund to the Commissioners of Woods by the following instalments, that is to say:—

Upon the thirtieth day of June or thirty-first day of December whichever first happens thereafter, and upon each succeeding thirtieth day of June and thirty-first day of December until sixty-nine half-yearly payments have been so made, a sum of money equal in amount to one-fortieth part of the said consideration, and upon the seventy-third day after such last half-yearly payment has been made a sum of money equal to two-fifths of one-fortieth part of the said consideration, shall be paid to the Commissioners of Woods.

The said consideration shall be accounted for and applied by the Commissioners of Woods in the same manner as is provided by this Act in respect of the consideration to be paid for the estate and interest of Her Majesty

in the lands described in the First Schedule to this Act.

8. The Commissioners of Woods may with the approval of the Treasury provide out of the capital of the land revenues of the Crown a new office of Land Revenue Records and Inrolments in lieu of the office existing at the passing of this Act.

In case the office existing at the passing of this Act is temporarily retained as such office by the Commissioners of Woods after the thirty-first day of December one thousand eight hundred and eighty-two, the Commissioners of Woods shall, during the period from the said thirty-first day of December one thousand eight hundred and eighty-two until possession of the said office is given to the Commissioners, pay to the Commissioners, out of the income of the land revenues of the Crown, interest by way of rent at the rate of three and a half per cent. per annum upon such proportion of the consideration payable in respect of the lands described in the First Schedule to this Act as is found to be applicable to the said office.

9. The surveyor herein-before directed to be appointed by the Treasury shall, previous to the first day of June one thousand eight hundred and eighty-three, and having regard to the considerations mentioned in section sixty-three of the Lands Clauses Consolidation Act, 1845, ascertain the consideration to be paid for the lands described in the Fourth Schedule to this Act; and the said consideration shall be paid by the Commissioners to the Commissioners of Woods on or before the thirtieth day of June one thousand eight hundred and eighty-three.

All rent in respect of the vaults under the said chapel in arrear on the thirtieth day of June one thousand eight hundred and eighty-three shall be received by the vicar of the parish of Saint Martin-in-the-Fields, and all rent accruing due up to the first day of payment after the said thirtieth day of June one thousand eight hundred and eighty-three shall be received by the Commissioners, and the Commissioners shall pay to the said vicar an apportioned part of such rent in respect of the time between the last preceding day of payment and the said thirtieth day of June one thousand eight hundred and eighty-three.

The Commissioners of Woods shall pay all expenses in relation to the purchase of the lands described in the Fourth Schedule to this Act, other than expenses payable under this Act by the Commissioners, out of the purchase money to be paid for such lands; and subject to the payment of the said expenses, the Com-

missioners of Woods shall lay out the whole of the said purchase money if the same does not exceed the sum of two thousand three hundred and thirty-three pounds, or, if the same exceeds such sum, shall lay out two thousand three hundred and thirty-three pounds, in the purchase of Three Pounds per Centum Consolidated Bank Annuities, or Three Pounds per Centum Reduced Bank Annuities, in the names of the vicar and churchwardens for the time being of the parish of Saint Martin-in-the-Fields, and the said vicar and churchwardens shall apply the dividends arising therefrom to the repair and maintenance of the fabric of the parish church of Saint Martin-in-the-Fields, and shall lay out the residue, if any, of such purchase money, after laying out the said sum of two thousand three hundred and thirty-three pounds as aforesaid, and after payment of such expenses, in the purchase of Three Pounds per Centum Consolidated Bank Annuities, or Three Pounds per Centum Reduced Bank Annuities, in the names of the said Commissioners of Woods, and any dividends arising therefrom shall be laid out by the said Commissioners of Woods in like manner.

The Commissioners of Woods may, with the consent of the Lord Bishop of the Diocese of London, and having regard to the advantage which any future or present lessees or tenants of the Crown, their servants and dependents, may derive or be likely to derive from the proximity of the church or chapel to Crown property, from time to time apply the whole or any part of the said residue of the said purchase money so laid out as aforesaid, and of the dividends arising therefrom, in or towards the cost of providing a church or chapel or of enlarging a church or chapel in the said diocese of London.

10. Any of the prescribed lands acquired for the purposes of this Act, which were at the time of such acquisition subject to land tax, shall continue liable thereto.

11. All rights of way, rights of laying down or of continuing any pipes, sewers, or drains, on, through, or under any of the prescribed lands acquired for the purposes of this Act, and all other rights or easements in or relating to such lands shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the Commissioners, subject to this provision, that all persons and bodies of persons, corporate and unincorporate, may recover from the Commissioners such compensation, if any, as they may be entitled to under the provisions of the Lands Clauses Consolidation Acts, or any of

them, for any rights or property of which they may be deprived in pursuance of this section, the amount of such compensation to be determined in manner provided by the Lands Clauses Consolidation Acts.

12. Nothing in this Act shall extend to take away or impair any rights or jurisdiction of the Metropolitan Board of Works in relation to any sewers, drains, or watercourses.

13. The Commissioners, and their surveyors, officers, and workmen, may at all reasonable times in the daytime, upon giving twenty-four hours previous notice in writing to the occupier thereof, enter into and upon any of the prescribed lands for the purpose of surveying or valuing the same.

14. The Commissioners after they have acquired possession of the prescribed lands, or of any part thereof, may pull down and remove any buildings on such lands or on such part, and sell the materials composing such buildings, and may construct on such lands or on such part such buildings and works, and do all such other things, as may, in their opinion, be suitable and proper for the purposes of this Act.

15. All buildings erected on the prescribed lands by or under the direction of the Commissioners shall be exempt from the operation of the Metropolitan Buildings Act, 1855, and any Act amending the same, whether passed before or after the passing of this Act, except so far as any future Act expressly negatives this section.

16. Save as in this Act specially provided, all expenses incurred by the Commissioners in carrying out the purposes of this Act shall be defrayed out of moneys provided by Parliament, and all moneys received under this Act by the Commissioners shall be paid into the Exchequer.

17. Every acquisition by the Commissioners of any part of the prescribed lands, or of any estate, interest, or easement therein, shall be deemed to be a purchase under the Act of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter twenty-eight, intituled "An Act to amend an Act of the fourteenth and fifteenth years of Her present Majesty, for the direction of public works and buildings; and to vest the buildings appropriated for the accommodation of the Supreme Courts of Justice in Edinburgh in the Commissioners of Her Majesty's Works and Public Buildings;" and the prescribed lands, or such portions thereof as may be acquired for

the purposes of this Act, shall be held by the Commissioners for the public service in like manner as if such lands or portions had been duly purchased by them under the said Act of the fifteenth and sixteenth years of the reign of Her present Majesty.

Provided that in the case of the purchase, sale, or exchange of any part of the prescribed lands, or of any estate, interest, or easement therein, it shall not be necessary for the person who sells or purchases the same or takes the same in exchange to ascertain that the direction or consent of the Treasury has been given to such sale, purchase, or exchange.

18. Every notice, summons, writ, or other document required to be given, issued, or signed by or on behalf of the Commissioners may be given, issued, or signed by the secretary or assistant secretary for the time being of the Commissioners, and need not be under the common seal of the Commissioners, and may be in writing or in print, or partly in writing and partly in print.

19. Subject to any rules of court, all orders which the High Court is empowered to make under this Act may be made by a judge of the High Court in chambers, and any application for or in respect of any such order shall be made to a judge of the Chancery Division of the High Court.

20. Any person who wilfully obstructs any person acting under the authority of the Com-

missioners in the lawful exercise of the powers vested in them under this Act shall for each offence be liable to a penalty not exceeding five pounds, to be recovered in manner provided by the Summary Jurisdiction Acts.

21. Every conveyance, assignment, or other deed or instrument whereby any land, or any estate, interest, or easement by this Act authorised to be purchased is conveyed or assigned to the Commissioners for the purposes of this Act shall be inrolled in the office of the Queen's Remembrancer amongst the records of the High Court, and entered in the books of the Commissioners; and every such conveyance, assignment, or other deed or instrument when so inrolled shall, without any other enrolment or acknowledgment thereof, and without any registry thereof, be good and available in law, any Act of Parliament, law, practice, or usage to the contrary in anywise notwithstanding.

22. In this Act—

“The Treasury” means the Commissioners of Her Majesty's Treasury:

“The Commissioners of Woods” means the Commissioners of Her Majesty's Woods, Forests, and Land Revenues:

“High Court” means Her Majesty's High Court of Justice in England.

23. This Act may be cited as the Public Offices Site Act, 1882.

SCHEDULES referred to by the foregoing Act.

THE FIRST SCHEDULE.

No. on deposited Plan.	Description of Property.
SPRING GARDENS.	
57	House, offices, and yard, No. 16.
56	Mansion house, offices, garden, stable, yard, coach-houses, and stables. No. 18.
55	House and offices, No. 20.
54	House and offices, No. 22.
53	House and offices, No. 24.
52	House and offices, No. 26.

No. on deposited Plan.	Description of Property.
49	House, yard, and offices, No. 28.
48	House, yard, and offices, No. 30.
47	House, yard, and offices, No. 32.
46	House, yard, and offices, No. 34.
45	House, yard, and offices, No. 36.
44	House and offices, No. 38.
43	House, yard, and offices, No. 40.
42	House, yard, and offices, No. 42.
41	House, yard, and offices, No. 44.
40 } 39 } 38 }	House, offices, yard, and garden, No. 46, passage under footway, and ornamental garden ground.
22	House and offices, No. 45.
23	House and offices, No. 47.
25	House and offices, No. 51.
26	House and offices, No. 53.
27	House and offices, No. 55.
28	House and offices, No. 57.
29	House and offices, No. 59.
30	House and offices, No. 61.
31	House and offices, No. 63.
32	House and offices, No. 65.
33	House and offices, No. 67.
34	House and offices, No. 69.
35	House and offices, No. 71.
36	House and offices, No. 73.
37	House, offices, and yard, No. 75.
	WHITEHALL.
Part 3	Part of the mansion house, offices, gardens, yards, and buildings known as the Admiralty.

THE SECOND SCHEDULE.

No. on deposited Plan.	Description of Property.
1	Forage barn of cavalry guard and engine house, Whitehall.
2	House and garden in Whitehall.
59	House and offices and forecourt in St. James's Park.
60	Dwelling-house, garden, out-buildings, stables, and forecourt in Saint James's Park.
21	The site of Spring Gardens Mews.
61	Part of St. James's Park.
62	The site of passage-way leading from Spring Gardens to Saint James's Park.
58	The site of steps and passage-way from Spring Gardens to Saint James's Park.

THE THIRD SCHEDULE.

No. on deposited Plan.	Description of Property.
Part 3	Part of the mansion house, offices, gardens, yards, and buildings known as the Admiralty, Whitehall.
Part 4	Building in rear of houses Nos. 37 and 38, Charing Cross.
24	Two houses and offices, No. 49, Spring Gardens.

THE FOURTH SCHEDULE.

No. on deposited Plan.	Description of Property.
	SPRING GARDENS.
50	St. Matthew's Church and vaults under.
51	Entrance to vaults and area.

THE FIFTH SCHEDULE.

No. on deposited Plan.	Description of Property.
	CHARING CROSS.
Part 4	House and offices, No. 37.
5	House, No. 38.
6	House, offices, out-buildings, yard, and shop, No. 39.
7	House, offices, and shop, No. 40.
8	House and yard, No. 41.
9	House and shop, No. 53.
10	House and shop, No. 54.
	SPRING GARDENS.
11	House and wine vaults, No. 21.
12	Vacant ground.
13	Entrance to the "Ship Restaurant."
14	House and yard, No. 29.
15	House and offices, No. 31.
16	House, offices, yard, and out-buildings, No. 33.
17	House, office, and out-buildings, No. 35.
18	House, yard, and out-buildings, No. 37.
19	House, yard, and out-buildings, No. 39.
20	Public-house, yard, and out-buildings—"Duke of Wellington."

CHAP. 33.

Metropolitan Board of Works (Money) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Interpretation.*
4. *Amendment of 44 & 45 Vict. c. 48. s. 10, for purposes of fire brigade.*
5. *Amendment of 44 & 45 Vict. c. 48. s. 13. as to expenditure for purposes of main drainage and main sewers.*
6. *Amendment of 44 & 45 Vict. c. 48. s. 9 (e) as to expenditure for toll bridges and pensions.*
7. *Amendment of 44 & 45 Vict. c. 48. s. 7. as to expenditure for Hackney Commons.*
8. *Power to contribute to improvements at Hyde Park Corner.*
9. *Power to expend moneys for purposes of 45 & 46 Vict. c. lvi.*
10. *Power to expend moneys for sundry purposes during year 1883.*
11. *Special power to expend money for purposes of main drainage and main sewers.*
12. *Expenses of inquiry as to markets.*
13. *Power to lend to vestry, district board, corporations, burial boards, &c.*
14. *Power to lend to board of guardians.*
15. *Extension of amount of loans to managers of Metropolitan Asylum District.*
16. *Power to lend to School Board for London.*
17. *Power to raise consolidated stock.*
18. *Board may raise money by bills.*
19. *Form and length of currency and interest on metropolitan bills.*
20. *Payment and applications of proceeds of metropolitan bills and charge of bills on consolidated rate.*
21. *Mode of issue of metropolitan bills.*
22. *Regulations to be made by the Board as to issue, cancellation, &c. of metropolitan bills.*
23. *Power to create consolidated stock partially suspended while metropolitan bills authorised to be raised.*
24. *Application of certain provisions of 24 & 25 Vict. c. 98. to metropolitan bills.*
25. *Arrangement with bank as to issue, &c. of metropolitan bills.*
26. *32 & 33 Vict. c. 102. s. 38. not to extend to money raised under this Act.*
27. *Repayments to be carried to Consolidated Loan Fund.*
28. *Limit to exercise of borrowing powers.*

SCHEDULES.

An Act further to amend the Acts relating to the raising of Money by the Metropolitan Board of Works; and for other purposes. (10th August 1882.)

WHEREAS by the Metropolitan Board of Works (Loans) Act, 1875, (in this Act referred to as "the Act of 1875,") the raising of money by the Metropolitan Board of Works (in this Act referred to as "the Board") for the purposes therein specified was regulated, and provision was made requiring that the borrowing powers granted to the Board by Parliament for the purposes therein named should for the future be limited both in time and amount:

And whereas by the Metropolitan Board of Works (Money) Act, 1881, (in this Act referred to as "the Act of 1881,") the Board were empowered to raise certain sums of money for

the purposes in the said Act mentioned, and limits of time and amount within which the powers by the said Act granted might be exercised were fixed:

And whereas the powers for the raising of money by the Act of 1881 conferred upon the Board have been partially exercised, but it is expedient that the Board should have power to raise certain further sums of money specified in the First Schedule to this Act annexed for the purposes, upon the terms, and subject to the limitations herein-after mentioned, and that the Act of 1881 should be amended:

And whereas it is expedient that the Board should be empowered to raise any of the moneys which they are by this Act authorised to raise, and which it may be convenient to raise for a temporary period by the issue of bills, with the consent of the Treasury, for not less than three and not more than twelve months to be repaid out of moneys raised by

the creation of consolidated stock under this Act:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Metropolitan Board of Works (Money) Act, 1882, and the Metropolitan Board of Works (Money) Acts, 1875 to 1881, and this Act, may be cited together as the Metropolitan Board of Works (Money) Acts, 1875 to 1882.

2. This Act shall be read and have effect as one with the Metropolitan Board of Works (Loans) Acts, 1869 to 1871, and the Metropolitan Board of Works (Money) Acts, 1875 to 1881.

3. The expression "Parks and Open Spaces Acts" in this Act shall mean the enactments specified in Part I. of the Second Schedule to this Act annexed.

The expression "Embankment Acts" in the Metropolitan Board of Works (Loans) Act, 1869, and in this Act, shall mean the series of Acts specified in Part II. of the Second Schedule to this Act annexed, and the Metropolitan Board of Works (Loans) Act, 1869, shall be construed accordingly.

The expression "Main Drainage Acts" in this Act shall have the same meaning as is assigned to the same term in the Metropolitan Board of Works (Loans) Act, 1869.

4. Section ten of the Act of 1881 shall be read and construed as if the aggregate amount which the Board was thereby authorised to expend for the purposes of the Fire Brigade Act, 1865, had been limited to a sum not exceeding thirty-five thousand pounds instead of thirty thousand pounds.

5. Section thirteen of the Act of 1881 shall be read and construed as if the aggregate amount which the Board was thereby authorised to expend for the purposes of main drainage and main sewers therein mentioned had been limited to a sum of four hundred and five thousand pounds instead of four hundred thousand pounds.

6. Sub-section (e) of section nine of the Act of 1881 shall be read and construed as if the aggregate amount which the Board were thereby authorised to expend for the purposes of the Metropolis Toll Bridges Act, 1877, and commutations of pensions therein mentioned, had

been limited to a sum of eighty thousand pounds instead of fifty thousand pounds.

7. Section seven of the Act of 1881 shall be read and construed as if the amount which the Board was thereby authorised to expend for the purposes of the Metropolitan Board of Works (Various Powers) Act, 1881, had been limited to thirty-five thousand seven hundred pounds instead of thirty-four thousand two hundred pounds, and as if the Board was thereby authorised to expend the said sum of thirty-five thousand seven hundred pounds for the purposes of the Metropolitan Board of Works (Hackney Commons) Act, 1881.

8. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-three, expend for the purpose of contributing towards the expenses of the improvements for facilitating the passage of traffic at Hyde Park Corner, and of all works and other matters necessary or incidental thereto now in contemplation and about to be commenced and completed by and under the authority of the First Commissioner of Her Majesty's Works and Public Buildings, such moneys as they may think fit, not exceeding the sum of twenty thousand pounds. All moneys expended by the Board for the purposes aforesaid shall be deemed to be expended under the authority of section one hundred and forty-four of the Metropolis Management Act, 1855, and the enactments altering, amending, or affecting the same: Provided always, that the moneys to be expended and the consolidated stock to be created by the Board for the purposes mentioned in this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the said purposes.

9. The Board may from time to time, up to the thirty-first day of December one thousand eight hundred and eighty-three, expend for the purposes of the Metropolitan Board of Works (Various Powers) Act, 1882, such moneys as they may think fit, not exceeding eighty-four thousand pounds: Provided always, that the money to be raised and the consolidated stock to be created by the Board for the purposes mentioned in this section shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the purpose of carrying out the provisions of the said Act in a proper and efficient manner.

10. The Board may from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-three expend for the purposes herein-after mentioned such moneys as they may think fit, not exceeding the amounts limited in relation to such purposes respectively :

- (a.) For the purposes mentioned in section one hundred and forty-four of the Metropolitan Management Act, 1855, and section seventy-two of the Metropolitan Management Amendment Act, 1862, one hundred thousand pounds ;
- (b.) For the purposes of the Metropolitan Street Improvements Act, 1872, thirty-four thousand and nine hundred and thirty-seven pounds eight shillings and threepence ;
- (c.) For the purposes of the Parks and Open Spaces Acts, fifteen thousand pounds ;
- (d.) For the purposes of the Embankment Acts, including the purchase and erection of lamp standards on such parts of such works as the Board may think fit, and of the Sun Street improvement under the Metropolitan Board of Works, Various Powers, Act, 1876, three thousand pounds ;
- (e.) For the purposes of the Metropolis Toll Bridges Act, 1877, including the cost of certain special works for the maintenance and repair of certain of the bridges acquired by the Board under the said Act, and commutation of pensions, sixty-five thousand pounds ;
- (f.) For the purposes of providing station-houses, fire-engines, fire-escapes, and permanent plant for the purposes of the Fire Brigade Act, 1865, fifty thousand pounds ;
- (g.) For the purposes of the road to be made and fenced by the Board across Wormwood Scrubs, and for enabling the Board to contribute to the expenses of the Fulham District Board of Works on account of the roads from Shepherd's Bush Common and the Harrow Road respectively, communicating with the said road across Wormwood Scrubs, six thousand pounds ;
- (h.) For the purposes of the Metropolitan Street Improvements Act, 1877, seven hundred and fifty thousand pounds, or such further sum as the Treasury may approve, provided that the moneys hereby authorised to be expended for the said purposes, together with all moneys heretofore authorised to be expended by the Board for the said purposes, shall not exceed three million seven hundred and twelve thousand five hundred and seven pounds ;
- (i.) For the purposes of the Thames River (Prevention of Floods) Act, 1879, ninety

thousand pounds, or such further sum as the Treasury may approve ;

- (k.) For the purposes of the Metropolitan Bridges Act, 1881, two hundred and fifty thousand pounds ; Provided that the moneys hereby authorised to be expended for the said purposes, together with all moneys heretofore authorised to be expended by the Board for the said purposes, shall not exceed seven hundred and sixty thousand pounds ;
- (l.) For the purposes of schemes made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, and confirmed by Provisional Order and Act of Parliament, seventy thousand pounds, or such further sum as the Treasury may approve ;
- (m.) For the purposes of sections ninety-one and ninety-two of the Metropolitan and District Railways (City Lines and Extensions) Act, 1879, as amended by the Metropolitan and District Railways (City Lines and Extensions) Act, 1882, with respect to the construction of the new street and works in the said section ninety-one mentioned, and the payment of the contribution towards the expense of constructing the same after the completion and opening of the same for the use of the public as by the said enactments provided, five hundred thousand pounds ; and
- (n.) For the purpose of acquiring a piece of land as an addition to Brook Green, in the parish of Hammersmith, an open space under the control and management of the Board, two thousand pounds :

Provided always, that the moneys to be expended and the consolidated stock to be created by the Board for the purposes mentioned in this section respectively shall be raised and created by them from time to time in such amounts and at such times only as the Board shall actually require and as the Treasury shall approve for the said purposes respectively.

11. The Board may from time to time up to the thirty-first day of December, one thousand eight hundred and eighty-three, expend, for the purpose of adding to, extending, enlarging, improving, and completing the works authorised by the Main Drainage Acts, and for rendering the same efficient in such manner as to them may seem proper, and for extending, enlarging, and improving the main sewers transferred to and vested in the Board under and by virtue of the Metropolis Management Act, 1855, and for making such other sewers and works, and such alterations and diversions

of such existing main sewers, as may to them seem proper for the purpose of relieving, supplementing, and rendering such main sewers efficient, and for carrying into effect the several provisions in relation thereto mentioned in the said Acts, such moneys as they may think fit not exceeding one hundred and ninety thousand pounds, in addition to any moneys which they are authorised to expend under any Acts passed previously to the passing of this Act; and all the provisions of the Main Drainage Acts and the Metropolis Management Act, 1855, and the Acts altering or amending the same, for the time being in force relating to the execution of works authorised by the said Acts respectively shall continue in force, and shall extend and apply respectively to the works executed by means of money raised for the purposes of this section; and all stock created under the authority of this Act, for such purposes shall be deemed to be created for the purposes of the above-mentioned Acts respectively.

12. The Board may as part of their general expenses pay all costs, charges, and expenses, which may be incurred by them up to the thirty-first day of December one thousand eight hundred and eighty-three, of and incidental to any inquiry to be instituted with respect to markets for the sale of food supplies within the Metropolis as defined by the Metropolis Management Act, 1855, and preliminary to, in, and incidental to the preparing, applying for, and obtaining an Act of Parliament with respect to such markets, or any of such markets.

13. Where a vestry or district board constituted under the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December one thousand eight hundred and eighty-three, the Board may lend to the vestry or district board, and the vestry or district board may borrow from the Board, such money as the Board think fit, and as the vestry or district board are authorised and desire to borrow, not exceeding two hundred thousand pounds; and

Where any corporation, body of commissioners, burial board, or other public body (not being a vestry or district board constituted under the Metropolis Management Act,

1855, a board of guardians, the Managers of the Metropolitan Asylum District, or the School Board for London), having power to levy directly or indirectly rates in respect of lands in the metropolis, as defined in the Metropolis Management Act, 1855, or to make charges on rates leviable in the metropolis as so defined, or to take within the metropolis as so defined dues or impositions in the nature of rates, desire, in pursuance of authority vested in them by Act of Parliament, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and to the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December, one thousand eight hundred and eighty-three, the Board may lend to the corporation, commissioners, burial board, or other public body, and they may borrow from the Board, such money as the Board think fit, and as the corporation, commissioners, burial board, or other public body are authorised and desire to borrow, not exceeding fifty thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding in the case of a loan for purposes of improvements effected by the widening of streets or bridges, or for the purpose of purchase of land in fee simple, sixty years, and for any other purpose thirty years.

14. Where a board of guardians of a union or parish wholly or for the greater part in the metropolis as defined in the Metropolis Management Act, 1855, desire, in pursuance of authority vested in them, to borrow money for the purpose of any work, or for the purpose of paying off any loan or debt, or for any other purpose, and it appears to the Board and the Treasury expedient that the repayment of the money to be borrowed shall be spread over a series of years, then from time to time during the year ending the thirty-first day of December, one thousand eight hundred and eighty-three, the Board may lend to the board of guardians, and the board of guardians may borrow from the Board, such money as the Board think fit, and as the board of guardians are authorised and desire to borrow, not exceeding two hundred thousand pounds.

Money lent by the Board under this section shall, notwithstanding anything in any other Act, be repaid to them, with interest, within

such time after the borrowing as the Board and the borrowers with the approval of the Treasury agree, not exceeding thirty years.

15. The Board may from time to time during the year ending the thirty-first day of December, one thousand eight hundred and eighty-three, lend to the Managers of the Metropolitan Asylum District, in addition to the sums heretofore authorised to be lent by the Board to the said Managers, such sums as the said Managers are from time to time authorised by the Local Government Board to borrow in pursuance of the Metropolitan Poor Act, 1867, and any Acts altering or amending the same for the time being in force, not exceeding in the whole one hundred thousand pounds, as though the said sums were included in the amount authorised to be lent for such purposes by section thirty-seven of the Metropolitan Board of Works (Loans) Act, 1869, and the Acts amending the same.

16. The Board may from time to time during the year ending the thirty-first day of December, one thousand eight hundred and eighty-three, lend to the School Board for London, in accordance with the provisions of the Elementary Education Acts, 1870 and 1873, and any Act or Acts altering or amending the same for the time being in force, such sums as the said School Board are from time to time authorised to borrow by the Education Department in pursuance of the said Acts, not exceeding in the whole the sum of five hundred thousand pounds.

The moneys so lent by the Board shall be repaid to them by the said School Board, with interest, within such period not exceeding fifty years as may be agreed upon between the Board and the said School Board with the sanction of the Education Department subject to the approval of the Treasury.

17. In order to raise money for the several purposes for which the Board are by this Act authorised to expend or lend money, the Board may from time to time create consolidated stock. Provided always, that—

Where the Board under the authority of this Act create consolidated stock to raise money for the purpose of the Fire Brigade Act, 1865, or to enable them to make a loan repayable within thirty years from the date of such loan, the Board shall from time to time carry to the consolidated loans fund such sums as the Treasury approve as being in their opinion sufficient to redeem within the period of thirty years from the date of the creation of such stock, or in the case of any such loan within any lesser period for which the same may be

made, an amount of consolidated stock equal to that so created; and

Where the Board are by this Act authorised to make a loan repayable within thirty years from the date of the loan, the Board, instead of raising money for any such loan by the creation of consolidated stock, may use for any such loan any moneys for the time being forming part of the consolidated loans fund, and not required for the payment of the dividends on consolidated stock; and

Where the Board raise consolidated stock for the purpose of any scheme made by the Board under the authority of the Artizans and Labourers Dwellings Improvement Act, 1875, and confirmed by Provisional Order and Act of Parliament, there shall be repaid (as provided by the Artizans and Labourers Dwellings Improvement Act, 1875,) to the consolidated rate out of the local rate as defined by the said last-mentioned Act, all moneys required for payment of dividends on and the redemption of all consolidated stock created for such purpose.

18. Notwithstanding anything in this Act or in any other Act relating to the Board contained, the Board, with the consent of the Treasury, may from time to time as they think fit raise any part of the moneys which they are by this Act authorised to raise, not exceeding in the whole the sum of five hundred thousand pounds, by the issue of bills under this Act.

19. A bill under this Act (in this Act referred to as a "metropolitan bill") shall be a bill in form prescribed by a regulation made in pursuance of this Act for the payment of the principal sum named therein, in the manner and at the date therein mentioned, so that the date be not less than three nor more than twelve months from the date of the bill.

Interest shall be payable in respect of a metropolitan bill at such rate and in such manner as the Board with the consent of the Treasury may direct.

20. All moneys raised by the issue of any metropolitan bills shall be paid to the Board, and shall be expended by them for the purposes for which the same are by this Act authorised to be raised respectively. The principal money and interest expressed in any metropolitan bill to be payable shall be charged on the consolidated rate, and shall be payable out of the said rate, or as regards principal out of moneys raised by the creation of consolidated stock under this Act for the purpose for which such principal money has been expended, and as regards interest out of the consolidated loans fund.

21. With respect to the issue of metropolitan bills the following provisions shall have effect:

- (1.) Metropolitan bills shall be issued under the authority of a warrant sealed by the Board and countersigned on behalf of the Treasury:
- (2.) Each metropolitan bill shall be for the amount directed by the Board:
- (3.) Each metropolitan bill shall be sealed by the Board, the sealing being attested by the clerk in his own name.

22. The Board may from time to time with the consent of the Treasury make, and when made rescind, alter, and add to regulations for carrying into effect the provisions of this Act with respect to metropolitan bills, and in particular—

- (1.) For regulating (subject to the provisions of this Act) the preparation, form, mode of issue, mode of payment, and cancellation of metropolitan bills:
- (2.) For regulating the issue of a new metropolitan bill in lieu of one defaced, lost, or destroyed:
- (3.) For preventing, by the use of counterfoils or of a special description of paper, or otherwise, fraud in relation to the metropolitan bills:
- (4.) For the proper discharge to be given upon the payment of a metropolitan bill.

Every regulation purporting to be made in pursuance of this section shall be deemed to be within the powers of this Act, and shall have effect as if it were enacted in this Act.

23. For the purpose of paying off the principal money of any metropolitan bills the Board may raise any sum which they are by this Act empowered to raise by the creation of consolidated stock for the purposes for which such principal money has been expended not exceeding the amount of such principal money, but save as aforesaid the powers given to the Board by this Act to raise moneys for any purposes by the creation of consolidated stock shall be suspended to the amounts and for the periods to and for which moneys are for the time being authorised by the Treasury to be raised for such purposes respectively by the issue of metropolitan bills.

24. Sections eight, nine, ten, and eleven of

the Act of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to indictable offences by forgery" (which sections relate to the forgery of and other frauds relating to Exchequer bills), shall apply to the metropolitan bills, and shall have effect as if "Exchequer bill" in those sections included "metropolitan bill."

25. The Board may enter into such arrangements with any bank approved by the Treasury for carrying into effect the provisions of this Act with respect to the issue of the metropolitan bills, and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto, as they may think proper and as may be approved by the Treasury.

26. The limitation on the borrowing power of the Board contained in section thirty-eight of the Metropolitan Board of Works (Loans) Act, 1869, shall not extend to moneys raised by the Board for purposes mentioned in this Act.

27. All sums received by the Board in respect of interest on or principal of any loan made by them under this Act shall be carried to the consolidated loans fund.

28. During the year ending the thirty-first day of December, one thousand eight hundred and eighty-three, the Board shall not (except for such temporary period not exceeding six months as the Treasury may from time to time sanction) raise otherwise than in conformity with and to the extent mentioned in this Act any money under any powers of borrowing conferred upon the Board either by this Act or any other Act whatsoever. Provided always, that the limitations contained in this section shall not extend to limit or control the raising of moneys under the authority of section thirty-four of the Metropolitan Board of Works (Loans) Act, 1869, or of section eight of the Metropolitan Board of Works (Loans) Act, 1875, for the purposes in the said sections respectively mentioned.



FIRST SCHEDULE.

NEW MONEY POWERS CONFERRED IN THIS ACT.

Section of Act.	Purpose.	Amount.
SUPPLEMENTAL UP TO 31ST DEC. 1882.		£ s. d.
4	Fire Brigade (amount already sanctioned, £30,000) - - -	5,000 0 0
5	Main Drainage - - - - -	5,000 0 0
6	Bridges, including Commutation of Pensions (Act of 1877) - - -	30,000 0 0
7	Hackney Commons - - - - -	1,500 0 0
		41,500 0 0
UP TO 31ST DECEMBER 1883.		
8	Hyde Park Corner Improvements - - - - -	20,000 0 0
9	Metropolitan Board of Works (Various Powers) Act, 1882 - - -	84,000 0 0
1ST JAN. TO 31ST DEC. 1883.		
10 (a)	Minor Improvements and Contributions to Local Improvements -	100,000 0 0
(b)	Streets under Act of 1872 - - - - -	34,937 8 3
(c)	Parks, commons, and open spaces - - - - -	15,000 0 0
(d)	Thames Embankments, Queen Victoria Street, Northumberland Avenue and Sun Street - - - - -	3,000 0 0
(e)	Bridges, including Commutation of Pensions (Act of 1877) - - -	65,000 0 0
(f)	Fire Brigade - - - - -	50,000 0 0
(g)	Road by Wormwood Scrubs - - - - -	6,000 0 0
(h)	Streets under Act of 1877 - - - - -	750,000 0 0
(i)	Thames River Prevention of Floods - - - - -	90,000 0 0
(k)	Bridges (Act 1881) - - - - -	250,000 0 0
(l)	Artizans' Dwellings - - - - -	70,000 0 0
(m)	New Street, &c., under the Metropolitan and District Railways (City Lines and Extension) Act, 1879, and the Metropolitan and District Railways (City Lines and Extensions) Act, 1882 - - -	500,000 0 0
(n)	Brook Green (addition to) - - - - -	2,000 0 0
11	Main Drainage - - - - -	190,000 0 0
13	Loans to vestries and district boards - - - - -	200,000 0 0
	Loans to other public bodies - - - - -	50,000 0 0
14	Loans to Guardians - - - - -	200,000 0 0
15	Loans to Managers of Metropolitan Asylum District - - -	100,000 0 0
16	Loans to School Board for London - - - - -	500,000 0 0
		3,321,437 8 3
AMOUNTS included above which are re-grants of borrowing power previously granted:		£ s. d.
	Minor Improvements - - - - -	38,713 9 4
	Streets under Act of 1872 - - - - -	34,937 8 3
	Parks, commons, and open spaces - - - - -	5,672 5 7
	Thames Embankments, Queen Victoria Street, Northumberland Avenue, and Sun Street - - -	3,000 0 0
	Bridges, including Commutation of Pensions (Act of 1877) - - - - -	65,000 0 0
	Fire Brigade - - - - -	8,278 18 8

Section of Act.	Purpose.	Amount.		
		£	s.	d.
		3,321,437	8	3
	Streets under Act of 1877	750,000	0	0
	Thames River Prevention of Floods	81,817	1	0
	Bridges (Act of 1881)	250,000	0	0
	Artizans' Dwellings	70,000	0	0
	Main Drainage	190,000	0	0
	Loans to vestries and district boards	35,200	0	0
	Loans to other public bodies	50,000	0	0
	Loans to Managers of Metropolitan Asylum			
	District -	19,700	0	0
	Loans to School Board for London	100,000	0	0
		1,702,319	2	10
	New borrowing powers—			
	For Board £774,018 5 5 }			
	For Loans 845,100 0 0 }			
		1,619,118	5	5

SECOND SCHEDULE.

PARKS AND OPEN SPACES ACTS.

PART I.

- The Finsbury Park Act, 1857, 20 & 21 Vict. c. cl.
 „ Southwark Park Act, 1864, 27 Vict. c. iv.
 „ Gardens in Towns Protection Act, 1863, 26 Vict. c. 13.
 „ Leicester Square Act, 1874, 37 Vict. c. x.
 „ Metropolitan Open Spaces Act, 1877, 40 & 41 Vict. c. 35.
 „ Metropolitan Commons Act, 1866, 29 & 30 Vict. c. 122.
 „ „ „ „ Amendment Act, 1869, 32 & 33 Vict. c. 107.
 „ „ „ „ 1878, 41 & 42 Vict. c. 71.
 „ „ „ Supplemental Act, 1871 (Blackheath), 34 & 35 Vict. c. lvii.
 „ „ „ Second Supplemental Act, 1871 (Shepherd's Bush), 34 & 35 Vict. c. lxiii.
 „ „ „ „ 1872 (Hackney Commons), 35 & 36 Vict. c. xliii.
 „ „ „ „ 1873 (Tooting Beck Common), 36 & 37 Vict. c. lxxxvi.
 „ Metropolitan Board of Works, Various Powers, Act, 1875 (Tooting Graveney Common), 38 & 39 Vict. c. clxxix., sec. 14.
 „ Hampstead Heath Act, 1871, 34 & 35 Vict. c. lxxvii.
 „ Metropolitan Commons Supplemental Act, 1877 (Clapham Common and Bostall Heath), 40 & 41 Vict. c. cci.
 „ Plumstead Common Act, 1878, 41 & 42 Vict. c. cxlv.
 „ Wormwood Scrubs Act, 1879, 42 & 43 Vict. c. clx.
 „ Metropolitan Commons Supplemental Act, 1881 (Brook Green, El Brook Common, &c.), 44 Vict. c. xviii.
 „ Metropolitan Board of Works (Hackney Commons) Act, 1881. 44 & 45 Vict. c. cxlvii.
 „ Metropolitan Open Spaces Act, 1881, 44 & 45 Vict. c. 34.

PART II.

Embankment Acts.

- The Thames Embankment (North) Act, 1862, 25 & 26 Vict. c. 93., 26 & 27 Vict. c. 45.
 " " (South) Act, 1863, 26 & 27 Vict. c. 75.
 " " Amendment Act, 1864, 27 & 28 Vict. c. cxxxv., 27 & 28 Vict. c. 61.
 " " (North and South) Act, 1868, 31 & 32 Vict. c. cxi., 31 & 32 Vict. c. 43.
 " " (Chelsea) Act, 1868, 31 & 32 Vict. c. cxxxv., 32 & 33 Vict. c. 134.
 " " (North) Act, 1870, 33 & 34 Vict. c. xcii.
 " " " " 1872, 35 & 36 Vict. c. lxvi.
 " " (Land) Act, 1873, 36 & 37 Vict. c. 40.
 " " (South) Act, 1873, 36 Vict. c. vii.
 Charing Cross and Victoria Embankment Approach Act, 1873, 36 & 37 Vict. c. c.
 Metropolitan Board of Works, Various Powers, Act, 1876 (Chelsea Embankment), 39 & 40 Vict. c. lxxix.

CHAP. 34.

Beer Dealers' Retail Licences (Amendment) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Extension of discretion as to licences for consumption of beer off the premises.*
2. *Certificates at annual licensing meetings only.*
3. *Short title; extent; and construction of Act.*

An Act to amend "The Beer Dealers'
 Retail Licences Act, 1880."
 (10th August 1882.)

WHEREAS by the Beer Dealers Retail Licences Act, 1880, it is provided that the licensing justices shall be at liberty to exercise their discretion respecting the grant of certificates for such additional licences for sale of beer by retail off the premises as are therein referred to, and that certificates for such additional licences shall be granted at general annual licensing meetings, and not at any other time:

And whereas it is expedient to extend the provisions of the said Act to the granting of certificates for all licences for sale of beer by retail for consumption off the premises:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Notwithstanding anything in section eight of the Wine and Beerhouse Act, 1869, or in any other Act now in force, the licensing justices shall be at liberty, in their free and unqualified discretion, either to refuse a certificate for any licence for sale of beer by retail to be consumed off the premises on any grounds appearing to them sufficient, or to grant the same to such persons as they in the execution of their statutory powers and in the exercise of their discretion deem fit and proper.

2. Certificates for any such licences as aforesaid shall, notwithstanding anything in any Act now in force, be granted at general annual licensing meetings, and not at any other time.

3. This Act may be cited as the Beer Dealers' Retail Licences (Amendment) Act, 1882; and shall not extend to Scotland; and words therein have the same meaning as in the Licensing Act, 1872.

CHAP. 35.

Friendly Societies (Quinquennial Returns) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Repeal of 38 & 39 Vict. c. 60. s. 14. so far as relates to the quinquennial return.*

An Act to amend so much of "The Friendly Societies Act, 1875," as relates to quinquennial returns of sickness and mortality.

(10th August 1882.)

WHEREAS by section fourteen of the Friendly Societies Act, 1875, every registered society is required, within six months after the expiration of every five years, to send to the registrar a return to be called the quinquennial return of the sickness and mortality experienced by the societies during the said five years, and an abstract of such return is to be laid before Parliament:

And whereas the returns sent in pursuance of the said section have furnished materials for the construction of tables of sickness and mortality for the guidance of friendly societies, and it is inexpedient to impose any longer on

friendly societies the burden of sending the said returns:

And whereas it is expedient to repeal the said requirement:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Friendly Societies (Quinquennial Returns) Act, 1882.

2. So much of section fourteen of the Friendly Societies Act, 1875, and of Schedule Two to that Act, as relates to sending to the registrar every five years a return to be called a quinquennial return of the sickness and mortality experienced by the society, or as relates to such return, is hereby repealed.

CHAP. 36.

Casual Poor Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Commencement of Act.*
3. *Extent of Act.*
4. *Discharge of paupers.*
5. *Penalty for obtaining poor relief by false statement.*

An Act to amend the Pauper Inmates Discharge and Regulation Act, 1871.

(10th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Casual Poor Act, 1882, and shall be construed as one with

the Pauper Inmates Discharge and Regulation Act, 1871.

2. This Act shall commence and come into operation from and immediately after the last day of December one thousand eight hundred and eighty-two.

3. This Act shall not extend to Scotland or Ireland.

4. Section five of the Pauper Inmates Discharge and Regulation Act, 1871, is hereby repealed, and in lieu thereof it is hereby enacted as follows:

A casual pauper shall not be entitled to discharge himself from a casual ward before nine o'clock in the morning of the second day following his admission, nor before he has performed the work prescribed for him as in the said Act mentioned; and where a casual pauper has been admitted on more than one occasion during one month into any casual ward of the same union, he shall not be entitled to discharge himself before nine o'clock in the morning of the fourth day after his admission, and he may at any time during that interval be removed by any officer of the guardians, or by a police constable, to the workhouse of the union, and be required to remain in such workhouse for the remainder of the period of his detention.

Provided that in computing the number of days during which a casual pauper may be detained under this section Sunday shall not be included.

Provided also, with respect to the metropolis, as follows:—

(1.) In determining the number of admis-

sions of a casual pauper every casual ward in the metropolis shall be deemed to be a casual ward of the same union.

(2.) The expressions "workhouse of the union" in this section shall include any workhouse and any asylum provided under the Metropolitan Poor Act, 1867, for the reception and setting to work of the casual poor, to which the casual poor of the union can be sent.

5. (1.) If any person for the purpose of obtaining relief from the rates raised for the relief of the poor, for himself or for any other person, wilfully gives a false name, or makes or uses a false statement to the guardians of any union or any of their officers, he shall be deemed an idle and disorderly person within the meaning of section three of the Act of the fifth year of King George the Fourth, chapter eighty-three, "for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of Great Britain called England."

CHAP. 37.

Corn Returns Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Extent of Act.*
3. *Commencement of Act.*
4. *Return from towns of purchases of British corn, and publication of average price.*
5. *Weekly returns of purchases of British corn.*
6. *Buyers of corn bound to make returns of purchases of corn.*
7. *Weekly summary of quantities and prices by inspectors to the Board of Trade.*
8. *Computing of corn according to the bushel.*
9. *Computation and publication of averages by Board of Trade.*
10. *Application of septennial average to Tithe Commutation Acts.*
11. *Penalty for failure to make return.*
12. *Penalty for false return.*
13. *Inspectors of corn returns.*
14. *Regulations as to execution of Act and supply of books, &c.*
15. *Expenses.*
16. *Application of Act to London.*
17. *Recovery of fines.*
18. *Definitions.*
19. *Repeal of Acts.*

SCHEDULE.

An Act to amend the Law respecting the obtaining of Corn Returns.
(10th August 1882.)

Enacted by the Queen's most Excellent Majesty, by and with the advice and consent

of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Corn Returns Act, 1882.

2. This Act shall not extend to Scotland or Ireland.

3. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

4. Weekly returns of the purchases of British corn shall be made, under the direction of the Board of Trade, in manner provided by this Act from such towns, not less than one hundred and fifty and not more than two hundred in number, as may be from time to time fixed by Her Majesty in Council, and the average price of British corn shall be from time to time ascertained from those returns, and published by the Board of Trade in manner provided by this Act.

5. Every such buyer of corn as is herein-after mentioned in any town from which corn returns are for the time being required by this Act to be made, shall, weekly, on the last market day in the week in that town, or on such other day as may be from time to time fixed by Her Majesty in Council, make to the inspector of corn returns for that town, at the place fixed, as in this Act mentioned, a return in writing signed by him, specifying, with respect to the seven days ending on and including the day on which the return is made, the amount of every parcel of each sort of British corn bought by him in the town, whether from the producer or otherwise, and the price thereof, and the weight or measure by which the same was bought, the name of the seller, and if the same was sold or bought on account of any other person the name of that person, and if an inspector of corn returns delivers to a buyer of corn required under this Act to make returns a notice in writing requiring him to declare where and by whom and in what manner any British corn was delivered to him, such buyer shall make a return of the particulars so required in a separate statement in writing signed by him.

6. The following persons shall make the returns required by this Act, and are in this Act referred to as buyers of corn in a town; that is to say,

- (1.) Every person who deals in British corn in such town; also
- (2.) Every person who in any such town engages in or carries on the trade of a cornfactor, miller, maltster, brewer, or distiller; also
- (3.) Every person who is the owner or part owner of any carriages carrying goods or

passengers for hire to and from or within any such town; also

- (4.) Every person who as a merchant, clerk, agent, or otherwise, purchases in any such town any British corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof.

7. Every inspector of corn returns shall record in the prescribed manner the returns made to him under this Act in any town, and in every week shall ascertain from those returns the total quantity with the total and average price of each sort of British corn returned to him in that town during that week, and shall on the next Monday, or such other day as may be prescribed, send to the Board of Trade in the prescribed manner and form a summary of such total quantities and total and average prices for the said week.

A copy of the weekly summary from any town shall, together with the prescribed details (exclusive of the names of persons), be made public there in the prescribed manner.

8. In the weekly summary of quantities and prices each sort of British corn shall be computed with reference to the imperial bushel. An inspector of corn returns shall convert into such imperial bushel all returns made to him in any other measure or by weight or by a weighed measure, and in the case of weight or weighed measure shall convert the same at the rate of sixty imperial pounds for every bushel of wheat, fifty imperial pounds for every bushel of barley, and thirty-nine imperial pounds for every bushel of oats.

9. The Board of Trade shall cause the average prices of each sort of British corn to be computed from the summaries sent by the inspectors of corn returns in pursuance of this Act, as follows:

- (1.) In each week the average price during the next preceding week of each sort of British corn for the whole of the towns and for each town from which a summary is obtained, shall be computed, and shall be published in the London Gazette:
- (2.) After each of the quarter days, the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, the average price of each sort of British corn during the quarter ending on that quarter day shall be forthwith computed and published in the London Gazette:
- (3.) After the twenty-fifth day of December in every year the average price of each

sort of British corn shall be computed for the year, and the seven years ending on that day, and shall be published in the London Gazette in the month of January next following.

- (4.) The average price of any sort of British corn for any week shall be ascertained by adding together the total quantities of that sort of British corn appearing from the summaries of the inspectors of corn returns to have been bought during such week, and the total prices for those quantities as appearing from the said summaries, and by dividing the total prices by the total quantities as so ascertained. The quarterly or yearly average prices shall be ascertained by adding together the weekly averages of the weeks included in such quarter or year, and dividing the total by the number of weeks in such quarter or year respectively :
- (5.) The septennial average price shall be ascertained by adding together the average annual prices for the seven years, and dividing the total by seven.
- (6.) The annual and septennial average shall state the average for the imperial bushel.

10. The statement of the septennial average price referring to the imperial bushel published under this Act in the London Gazette shall be substituted for the advertisement referred to in such portion of the Act of the session of the sixth and seventh years of the reign of King William the Fourth, chapter seventy-one, intituled "An Act for the Commutation of Tithes in England and Wales," as is repealed by this Act, and shall be deemed for the purposes of the Acts relating to the commutation of tithes to be an advertisement of the average price published under the said Act.

11. Every person who fails to make to an inspector of corn returns any return which he is required by this Act to make, or to include in any such return any purchase of British corn or any material particular, shall be liable on summary conviction to a fine not exceeding twenty pounds.

12. Any person who in any return made in pursuance of this Act to an inspector of corn returns makes any false or fraudulent statement, also any person who includes or procures to be included in any such return any British corn not bona fide bought as specified in the return, or any corn which is not British corn, shall be guilty of a misdemeanour.

Where the Board of Trade have reason to

believe that a return or any particular in a return is false in any particular, they may cause that return, or so much as relates to that particular, to be omitted in the computation of the average prices in pursuance of this Act.

13. Such officers of Inland Revenue as the Commissioners of Inland Revenue from time to time appoint shall be inspectors of corn returns.

In every town from which corn returns are required for the time being under this Act to be made, a proper place shall be fixed for the delivery of those returns, and an inspector of corn returns shall attend there to receive the returns on the days on which the returns are required to be made; and the Commissioners of Inland Revenue shall from time to time provide the said place and publicly notify it in such manner as they think sufficient for giving notice thereof to all persons interested.

14. The Board of Trade may from time to time make, and when made revoke, vary, and add to, regulations respecting the execution of this Act and the duties of inspectors of corn returns, and such regulations shall be duly observed by all persons to whom they relate, and such regulations may refer to all the inspectors or all the towns from which returns are required, or to some one or more of them.

The Board of Trade shall supply inspectors of corn returns with proper books, forms, and documents for the performance of their duties, which shall be the property of the Board of Trade.

The regulations may provide for the inspection, by order of the Board of Trade, and under proper control, of the books and papers kept by inspectors of corn returns for the purposes of this Act.

15. The expenses incurred by the Commissioners of Inland Revenue or the Board of Trade in the execution of this Act shall, subject to the approval of the Lords Commissioners of Her Majesty's Treasury, be paid out of moneys provided by Parliament.

16. This Act shall apply to the City of London and the area within five miles from the Royal Exchange in that city in like manner as it applies to a town, subject to the following modifications; that is to say,

- (1.) The return shall be made on Wednesday in every week or on such other day as may be prescribed :
- (2.) The buyers of corn required to make the return shall be every person who within the said city and area deals in British

corn, or carries on business as a cornfactor, or who buys any British corn within the Corn Exchange in Mark Lane in the said city, or within any other building or place which is or may hereafter be used within the said city or area for the like purposes as the said Corn Exchange, and not any other person:

- (3.) The inspector of corn returns, when any vacancy takes place in the office, shall be appointed by the Board of Trade, at such salary or remuneration, payable out of moneys provided by Parliament, as they may with the approval of the Commissioners of Her Majesty's Treasury from time to time determine, and the place for the delivery of the returns shall be provided and notified either by the inspector or the Board of Trade, as determined by the Board of Trade.

17. Any fine under this Act may be recovered in manner provided by the Summary Jurisdiction (England) Acts, and shall be paid into Her Majesty's Exchequer in such manner as the Lords Commissioners of Her Majesty's Treasury may direct.

18. In this Act, unless the context otherwise requires,—

The expression "British corn" means wheat, barley, and oats, the produce of the United Kingdom, the Channel Islands, or the Isle of Man, and any such wheat, barley, or oats is in this Act referred to as a sort of British corn:

The expression "prescribed" means prescribed by regulations of the Board of

Trade under this Act for the time being in force:

The expression "person" includes a body of persons, corporate or unincorporate:

The expression "bought" means the agreement to buy, whether made by sale-note, or otherwise, and irrespective of actual delivery in pursuance thereof.

19. The Acts set forth in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned; provided that—

(1.) This repeal shall not affect anything duly done or suffered in pursuance of the Acts hereby repealed;

(2.) This repeal shall not affect any returns made or average of prices published before the commencement of this Act, and such returns and average prices shall be dealt with in like manner as if they had been made and published in pursuance of this Act;

(3.) This repeal shall not affect the persons who at the commencement of this Act hold the offices of inspectors of corn returns mentioned in sections twelve, fourteen, and twenty-two of the first Act mentioned in the said schedule, and those persons, while they continue to hold office, shall be inspectors of corn returns under this Act; and the above-mentioned sections, and also sections thirteen, thirty-six, thirty-seven, and thirty-eight of the said Act, shall continue in force so far as regards the persons aforesaid respectively.

SCHEDULE.

REPEAL OF ACTS.

Session and Chapter.	Title.	Extent of Repeal.
5 & 6 Vict. c. 14.	An Act to amend the laws for the importation of corn.	The whole Act.
27 & 28 Vict. c. 87.	An Act to amend the law relating to publication of accounts of corn imported, and to returns of purchases and sales of corn.	The whole Act.
6 & 7 Will. 4. c. 71.	An Act for the commutation of tithes in England and Wales.	Section fifty-six.

CHAP. 38.

Settled Land Act, 1882.

ABSTRACT OF THE ENACTMENTS.

I.—PRELIMINARY.

1. *Short title ; commencement ; extent.*

II.—DEFINITIONS.

2. *Definition of settlement, tenant for life, &c.*

III.—SALE ; ENFRANCHISEMENT ; EXCHANGE ; PARTITION.

General Powers and Regulations.

3. *Powers to tenant for life to sell, &c.*
4. *Regulations respecting sale, enfranchisement, exchange, and partition.*

Special Powers.

5. *Transfer of incumbrances on land sold, &c.*

IV.—LEASES.

General Powers and Regulations.

6. *Power for tenant for life to lease for ordinary or building or mining purposes.*
7. *Regulations respecting leases generally.*

Building and Mining Leases.

8. *Regulations respecting building leases.*
9. *Regulations respecting mining leases.*
10. *Variation of building or mining lease according to circumstances of district.*
11. *Part of mining rent to be set aside.*

Special Powers.

12. *Leasing powers for special objects.*

Surrenders.

13. *Surrender and new grant of leases.*

Copyholds.

14. *Power to grant to copyholders licences for leasing.*

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

15. *Restriction as to mansion house, park, &c.*

Streets and Open Spaces.

16. *Dedication for streets, open spaces, &c.*

Surface and Minerals apart.

17. *Separate dealing with surface and minerals, with or without wayleaves, &c.*

Mortgage.

18. *Mortgage for equality, money, &c.*

Undivided Share.

19. *Concurrence in exercise of powers as to undivided share.*

Conveyance.

20. *Completion of sale, lease, &c., by conveyance.*

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. *Capital money under Act; investment, &c. by trustees or Court.*
22. *Regulations respecting investment, devolution, and income of securities, &c.*
23. *Investment in land in England.*
24. *Settlement of land purchased, taken in exchange, &c.*

VII.—IMPROVEMENTS.

Improvements with Capital Trust Money.

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- SCHEDULE.

An Act for facilitating Sales, Leases, and other dispositions of Settled Land, and for promoting the execution of Improvements thereon.

(10th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—PRELIMINARY.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

II.—DEFINITIONS.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of

instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires.

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement.

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being, under a settlement, beneficially entitled to possession of settled land, for his life, is for purposes of this Act the tenant for life of that

land, and the tenant for life under that settlement.

(6.) If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent.

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act.

(10.) In this Act—

(i.) Land includes incorporeal hereditaments, also an undivided share in land; income includes rents and profits; and possession includes receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith:

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting, or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and

includes a grant or licence for any mining purposes:

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners:

(xi.) Person includes corporation.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

General Powers and Regulations.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same; and

(ii.) Where the settlement comprises a manor,—may sell the seignory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in consideration of money paid for equality of exchange; and

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained.

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

Special Powers.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly.

IV.—LEASES.

General Powers and Regulations.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

- (i.) In case of a building lease, ninety-nine years:
- (ii.) In case of a mining lease, sixty years:
- (iii.) In case of any other lease, twenty-one years.

7.—(1.) Every lease shall be by deed, and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent that can reasonably be obtained, regard being had to any fine taken, and to any money laid out or to be laid out for the benefit of the

settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and Mining Leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with building purposes.

(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

- (i.) The annual rent reserved by any lease shall not be less than ten shillings; and
- (ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and
- (iii.) The rent reserved by any lease shall not exceed one fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

9. (1.) In a mining lease—

- (i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted.

carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf; and

- (ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent.

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorized by this Act, for or in connexion with mining purposes.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

- (i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

- (ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorize generally the tenant for life to make from time to time leases or grants of or affecting the settled land in that district or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorize the tenant for life to make any such lease or grant in any particular case.

(2.) Thereupon the tenant for life, and subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement, there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is

impeachable for waste in respect of minerals, three fourth parts of the rent, and otherwise one fourth part thereof, and in every such case the residue of the rent shall go as rents and profits.

Special Powers.

12. The leasing power of a tenant for life extends to the making of—

- (i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title; and
- (ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land; and
- (iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

Surrenders.

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

Copyholds.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

15. Notwithstanding anything in this Act, the principal mansion house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court.

Streets and open Spaces.

16. On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

(i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and

(ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be inrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the

manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Surface and Minerals apart.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

18. Where money is required for enfranchisement, or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act.

Undivided Share.

19. Where the settled land comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share.

Conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge.

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

- (i.) All estates, interests, and charges having priority to the settlement; and
- (ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed; and
- (iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required on production to him of the deed to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments, any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to shew the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls.

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money arising under this Act, subject to payment of claims properly payable thereout, and to application thereof for any special authorized object for which the same was raised, shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

- (i.) In investment on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the

purchase of the debenture stock, of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities:

- (ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land;
- (iii.) In payment for any improvement authorized by this Act;
- (iv.) In payment for equality of exchange or partition of settled land;
- (v.) In purchase of the seignory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land;
- (vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life;
- (vii.) In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land;
- (viii.) In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes;
- (ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge;
- (x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act;
- (xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the

option of the tenant for life, and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life, and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement.

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to on and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge.

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

VII.—IMPROVEMENTS.

Improvements with Capital Trust Money.

25. Improvements authorized by this Act are the making or execution on, or in connexion with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

(i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:

- (ii.) Irrigation; warping:
- (iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure:
- (iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water:
- (v.) Groynes; sea walls; defences against water:
- (vi.) Inclosing; straightening of fences; re-division of fields:
- (vii.) Reclamation; dry warping:
- (viii.) Farm roads; private roads; roads or streets in villages or towns:
- (ix.) Clearing; trenching; planting:
- (x.) Cottages for labourers, farm-servants, and artisans, employed on the settled land or not:
- (xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes:
- (xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise:
- (xiii.) Reservoirs, tanks, conduits, water-courses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption:
- (xiv.) Tramways; railways; canals; docks:
- (xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:
- (xvi.) Markets and market-places:
- (xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:
- (xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:
- (xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines:
- (xx.) Reconstruction, enlargement, or improvement of any of those works.

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorized by this Act, he may

submit for approval to the trustees of the settlement, or to the court, as the case may require, a scheme for the execution of the improvement, showing the proposed expenditure thereon.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement, on—

- (i.) A certificate of the Land Commissioners certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on
- (ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on
- (iii.) An order of the Court directing or authorizing the trustees to so apply a specified portion of the capital money.

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorized by this Act, or in contributing to the cost thereof.

28.—(1.) The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners by certificate in any case prescribe, maintain and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such

amount, if any, as the Commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

Execution and Repair of Improvements.

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorized by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Improvement of Land Act, 1864.

30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners after the commencement of this Act, all improvements authorized by this Act.

VIII.—CONTRACTS.

31.—(1.) A tenant for life—

- (i.) May contract to make any sale, exchange, partition, mortgage, or charge; and
- (ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and
- (iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and
- (iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and
- (v.) May enter into a contract for or relating to the execution of any improvement authorized by this Act, and may vary or rescind the same; and
- (vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor; but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof.

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof.

IX.—MISCELLANEOUS PROVISIONS.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877, or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorized by this Act were authorized by the Act under which the money is in Court.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act.

34. Where capital money arising under this Act is purchase money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be.

35. Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting,

the tenant for life, on obtaining the consent of the trustees of the settlement or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court.

X.—TRUSTEES.

38.—(1.) If at any time there are no trustees of a settlement within the definition in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder, or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act.

(2.) The person so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appoint-

ment of new trustees, the personal representatives or representative for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement.

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the settlement authorizes the receipt of capital trust money of the settlement by one trustee.

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do; and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition, or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the

conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money paid by them by direction of the tenant for life on the purchase, exchange, partition, or lease.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement, respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement, by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter, containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same.

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement.

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section.

XI.—COURT; LAND COMMISSIONERS; PROCEDURE.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually

exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers.

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money

arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales, shall, by virtue of this Act, become and shall be styled the Land Commissioners for England.

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and

the Land Commissioners, for the purpose of prosecuting, or defending, and carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

XII.—RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being

an assignee for value of the estate or interest of the tenant for life; and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture.

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position

and to have the duties and liabilities of a trustee for those parties.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act.

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners are exercisable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under this Act.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative.

(2.) But, in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, accordingly, notwithstanding anything in the settlement, the consent of the tenant for life shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power conferred by the settlement exercisable for any purpose provided for in this Act.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of

the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

XIII.—LIMITED OWNERS GENERALLY.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession, have the powers of a tenant for life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

- (i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services:
- (ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event:
- (iii.) A person entitled to a base fee, although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:
- (iv.) A tenant for years determinable on life, not holding merely under a lease at a rent:
- (v.) A tenant for the life of another, not holding merely under a lease at a rent:
- (vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for payment of debts or other purpose:
- (vii.) A tenant in tail after possibility of issue extinct:

(viii.) A tenant by the curtesy :

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised.

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

XIV.—INFANTS; MARRIED WOMEN; LUNATICS.

59. Where a person, who is in his own right seized of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act may be exercised on his behalf by the trustees of the settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman.

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person intrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate.

XV.—SETTLEMENT BY WAY OF TRUSTS FOR SALE.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, is subject to a trust or direction for sale of that land, estate, or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period, and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof:

and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement, and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorized by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorized by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other disposition is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution, be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

XVI.—REPEALS.

64.—(1.) The enactments described in the schedule to this Act are hereby repealed.

(2.) The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

XVII.—IRELAND.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exercisable

by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exercisable by those Courts under this Act.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill

Courts, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877.

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

THE SCHEDULE.

REPEALS.

23 & 24 Vict. c. 145. in part.	-	An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages and wills	} in part; namely,—
		Parts I. and IV. (being so much of the Act as is not repealed by the Conveyancing and Law of Property Act, 1881).	
27 & 28 Vict. c. 114. in part.	-	The Improvement of Land Act, 1864 - Sections seventeen and eighteen: Section twenty-one, from "either by a party" to "benefice" or " (inclusive); and from "or if the land owner" to "minor or minors" (inclusive); and "or circumstance" (twice): Except as regards Scotland.	- in part; namely,—
40 & 41 Vict. c. 18. in part.	-	The Settled Estates Act, 1877 Section seventeen.	- in part; namely,—

CHAP. 39.

Conveyancing Act, 1882.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short titles; commencement; extent; interpretation.*

Searches.

2. *Official negative and other certificates of searches for judgments, Crown debts, &c.*

Notice.

3. *Restriction on constructive notice.*

Leases.

4. *Contract for lease not part of title to lease.*

Separate Trustees.

5. *Appointment of separate sets of trustees.*

Powers.

6. *Disclaimer of power by trustees.*

Married Women.

7. *Acknowledgment of deeds by married women.*

Powers of Attorney.

8. *Effect of power of attorney, for value, made absolutely irrevocable.*
9. *Effect of power of attorney, for value or not, made irrevocable for fixed time.*

Executory Limitations.

10. *Restriction on executory limitations.*

Long Terms.

11. *Amendment of enactment respecting long terms.*

Mortgages.

12. *Reconveyance on mortgage.*

Saving.

13. *Restriction on repeals in this Act.*

SCHEDULE.

An Act for further improving the Practice of Conveyancing; and for other purposes. (10th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Preliminary.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881) and this Act may be cited together as the Conveyancing Acts, 1881, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in

the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland" is referred to as the Fines and Recoveries (Ireland) Act.

Searches.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries

are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds, or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenour thereof, shall be conclusive, affirmatively or negatively, as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing, with the concurrence of the Commissioners of Her Majesty's Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any Rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect

of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

(11.) Nothing in this section applies to deeds enrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule.

(12.) This section does not extend to Ireland.

Notice.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not be reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section.

Leases.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall

not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

Separate Trustees.

5.—(1.) On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Powers.

6.—(1.) A person to whom any power, whether coupled with an interest or not, is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorized to take the acknowledgment, the deed shall, as regards the

execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a judge of the High Court of Justice in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or a special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor, or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such rule shall make invalid any acknowledgment; and those rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act.

(4.) The enactments described in the Schedule to this Act are hereby repealed.

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted.

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the

index as soon as may be after the certificate is filed.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

Powers of Attorney.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or

bankruptcy of the donor of the power, had not been done or happened; and

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Executory Limitations.

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect.

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned, whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of reconveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall

prevail over a requisition of a subsequent incumbrancer.

Saving.

13. The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation,

effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act.

SCHEDULE.

REPEALS.

3 & 4 Will. 4. c. 74. - in part.	- The Fines and Recoveries Act - in part; namely,— Section eighty-four, from and including the words “and the same judge,” to the end of that section. Sections eighty-five to eighty-eight, inclusive.
4 & 5 Will. 4. c. 92. in part.	- The Fines and Recoveries (Ireland) Act - in part; namely,— Section seventy-five, from and including the words “and the same Judge,” to the end of that section. Sections seventy-six to seventy-nine, inclusive.
17 & 18 Vict. c. 75.	- An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.
41 & 42 Vict. c. 23.	- The Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.

CHAP. 40.

Copyright (Musical Compositions) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Printed notice restraining public performance.*
2. *Provision when right of performance and copyright are vested in different owners.*
3. *Penalty on owner of copyright for non-compliance with notice from owner of right of performance.*
4. *Costs.*
5. *Short title.*

An Act to amend the law of Copyright relating to Musical Compositions.
(10th August 1882.)

WHEREAS it is expedient to amend the law relating to copyright in musical compositions,

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and to protect the public from vexatious proceedings for the recovery of penalties for the unauthorised performance of the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. On and after the passing of this Act the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

2. In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical

composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

3. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds, to be recovered in any court of competent jurisdiction.

4. Notwithstanding the provisions of the Act passed in the third and fourth years of His Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the costs of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried.

5. This Act may be cited as the Copyright (Musical Compositions) Act, 1882.

CHAP. 41.

Customs and Inland Revenue Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

Customs and Excise.

2. *Import duties on tea.*
3. *Repeal of customs duties on vegetable matter other than chicory.*
4. *Repeal of excise duty on vegetable matter other than chicory.*

5. *Grant of duty on imitations of coffee and on coffee mixtures.*
6. *Conditions under which imitations of coffee and coffee mixtures may be sold.*
7. *Penalty for buying, &c. labels which have been used before.*
8. *Repeal of section 5 of 43 Geo. 3. c. 129.*

PART II.

Income Tax.

9. *Grant of duties of income tax.*
10. *Provisions of Income Tax Acts to apply to duties hereby granted.*
11. *Provisions as to duty on dividends, &c. paid prior to passing of this Act.*
12. *Provisions of Income Tax Acts to apply to duties to be granted for succeeding year.*

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Laws relating to Customs and Inland Revenue. (10th August 1882.)

Most Gracious Sovereign,

Wz, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties herein-after mentioned, and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Customs and Inland Revenue Act, 1882.

PART I.

Customs and Excise.

2. The duties of customs now chargeable upon tea shall continue to be levied and charged, on and after the first day of August one thousand eight hundred and eighty-two until the first day of August one thousand eight hundred and eighty-three, on the importation thereof into Great Britain or Ireland; (that is to say,)

Tea, the pound - Sixpence.

3. The duties of customs under the Customs Tariff Act, 1876, on vegetable matter (other than chicory) applicable to the uses of chicory or coffee shall cease and determine.

4. (1.) Section five of the Customs and Inland Revenue Act, 1872, so far as it imposes a duty of excise on any vegetable matter (other than chicory) applicable to the uses of chicory or coffee grown in the United Kingdom, is hereby repealed.

(2.) The several sections of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter one hundred and thirteen, relating to the duty on chicory or any such vegetable matter as aforesaid, shall be read as if the same were confined to chicory, and the expressions "or such other vegetable matter as aforesaid" and "or other vegetable matter," wherever the same respectively therein occur, were omitted therefrom.

5. (1.) There shall be granted and paid to Her Majesty, her heirs, and successors, upon every quarter of a pound weight of any article or substance prepared or manufactured for the purpose of being in imitation of, or in any respect to resemble, or to serve as a substitute for, coffee or chicory, which is sold or kept for sale in the United Kingdom, and also upon every quarter of a pound weight of any mixture of such article or substance as aforesaid with coffee or chicory which is sold or kept for sale in the United Kingdom, the duty of excise of one halfpenny.

(2.) The said duty shall be under the care and management of the Commissioners of Inland Revenue, and shall be denoted by, and collected by means of, an adhesive label or labels to be provided by the said Commissioners.

(3.) Any label so provided shall be deemed to be included within the term "stamp" in sections eighteen, nineteen, twenty, and twenty-one of the Stamp Duties Management Act, 1870.

(4.) All the powers, clauses, regulations, and directions contained in any Act relating to duties of excise or to penalties under Excise Acts, and now or hereafter in force, shall be of full force and effect with respect to the said

duty and the penalties by this Act imposed, so far as the same are applicable, as fully and effectually as if the same had been herein specially enacted with reference to such duty and penalties.

6. (1.) No article or substance or mixture upon which a duty of excise is imposed by this Act shall be sold or exposed to sale, or be offered or kept ready for sale, or be delivered out of the custody or possession of any preparer, manufacturer, or importer thereof, except under the following conditions:

- (a.) The article or substance or mixture shall be placed in packets, each containing one quarter of a pound or any number of quarters of a pound:
- (b.) Each such packet shall have affixed thereto a label or labels (which shall not have been before used) denoting the proper amount of duty payable upon such packet according to the weight thereof:
- (c.) Such label or labels shall be affixed so that the whole thereof shall adhere to the packet, and so that the packet cannot be opened without tearing or destroying the label or labels:
- (d.) Where more than one label is affixed to any packet the labels shall be affixed so that every label shall be wholly or partially visible.

Provided that each such packet containing, or purporting to contain, coffee with any other article or substance mixed therewith shall have affixed thereto a label, in manner herein-before provided, denoting in letters of not less size than the largest letters affixed to or imprinted on such label the proper name of the several articles or substances of which such mixture is composed.

(2.) If any person shall sell or expose to sale, or offer or keep ready for sale, or deliver out of his custody or possession, any such article or substance or mixture as aforesaid, otherwise than in conformity with the above conditions, he shall forfeit the same, and incur a fine of twenty pounds.

(3.) In any proceeding for recovery of the fine imposed by this section, if any question shall arise whether any label shall have been before used, proof that such label had not been before used shall lie upon the defendant.

(4.) Provided that nothing in this Act contained shall in any way affect any Act or Acts now in force relating to the adulteration of food.

7. If any person who shall prepare, manufacture, sell, keep for sale, or import any article or substance or mixture upon which a

duty of excise is imposed by this Act, shall buy, receive, or have in his possession any label provided under this Act which shall have been before used, or any portion of such a label (whether such label or portion shall be loose or affixed to any packet), he shall incur a fine of one hundred pounds, and every such label or portion shall be seized.

8. Section five of the Act of the forty-third year of the reign of King George the Third, chapter one hundred and twenty-nine, is hereby repealed, save as respects the validity, invalidity, effect, or consequences of anything already done or suffered.

PART II.

Income Tax.

9. There shall be charged, collected, and paid for the year which commenced on the sixth day of April one thousand eight hundred and eighty-two, in respect of all property, profits, and gains mentioned or described as chargeable in the Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four, the following duties of income tax; (that is to say,)

For every twenty shillings of the annual value or amount of property, profits, and gains chargeable under Schedules (A.), (C.), (D.), or (E.) of the said Act, the duty of sixpence halfpenny;

And for every twenty shillings of the annual value of the occupation of lands, tenements, hereditaments, and heritages chargeable under Schedule (B.) of the said Act,—

In England the duty of threepence farthing;

In Scotland and Ireland respectively, the duty of twopence and three-eighths of a penny.

Provided always, that where any dividends, interest, or other annual profits or gains are due or payable half-yearly or quarterly in the course of the said year, the first half-yearly payment and the two first quarterly payments shall be deemed to have been or be chargeable with the duty of fivepence, and the other half-yearly payment and the two other quarterly payments shall be deemed to be chargeable with the duty of eightpence.

10. All such provisions contained in any Act relating to income tax as were in force on the fifth day of April one thousand eight hundred and eighty-two (except section twenty-two of the Customs and Inland Revenue Act, 1881,) shall have full force and effect with respect to the duties of income tax granted by

this Act so far as the same shall be consistent with the provisions of this Act.

11. (1.) Where any dividend, interest, or other annual profits or gains due or payable half-yearly or quarterly shall have become due or payable in the course of the said year which commenced on the sixth day of April one thousand eight hundred and eighty-two, and shall have been paid to any person prior to the passing of this Act without any charge for the duty of income tax at the rate of fivepence having been made thereon or deducted therefrom, the amount of the said duty shall be added to the assessment in respect of the next half-yearly or quarterly payment to such person, and charged thereon and deducted therefrom accordingly.

(2.) Where any person liable to pay any rent, interest, annuity, or other annual payment in the course of the said year shall, on making any such payment prior to the passing of this Act, have not made any deduction or have made an insufficient deduction in respect of income tax, he shall be authorised to make the deduction or a sufficient deduction to make up the deficiency on the occasion of the next payment, in addition to any other deduction which he may by law be authorised to make.

(3.) The charge or deduction of the duty of income tax at the rate of fivepence in the case of any payment made in the course of the said year prior to the passing of this Act shall be deemed to have been a legal charge or deduction.

12. In order to ensure the collection in due time of any duties of income tax which may be granted for the year commencing on the sixth day of April one thousand eight hundred and eighty-three, all such provisions contained in any Act relating to the duties of income tax as are in force on the fifth day of April one thousand eight hundred and eighty-three shall have full force and effect with respect to the duties of income tax which may be so granted in the same manner as if the said duties had been actually granted and the said provisions had been applied thereto by an Act of Parliament passed on that day, provided that nothing in this section shall be deemed to render necessary or authorise the appointment of assessors for such of the said duties as may be granted and payable under Schedules (A.) and (B.) of the said Act of the sixteenth and seventeenth years of Her Majesty's reign, chapter thirty-four.

CHAP. 42.

Civil Imprisonment (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Imprisonment for alimentary debts.*
4. *Power to imprison for wilful failure to obey decree for alimentary debt.*
5. *Imprisonment for rates and assessments.*
6. *Imprisonment in law burrows, &c.*
7. *Discharge of persons in custody at the commencement of this Act.*
8. *Amendment of law as to aliment of civil prisoners.*
9. *Construction of Act.*

An Act to amend the Law relating to Civil Imprisonment in Scotland. (18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Com-

mons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited for all purposes as the Civil Imprisonment (Scotland) Act, 1882.

2. This Act shall come into operation on the first day of October one thousand eight

hundred and eighty-two, which date is herein-after referred to as the commencement of this Act.

3. From and after the commencement of this Act no person shall, except as herein-after provided, be apprehended or imprisoned on account of his failure to pay any sum or sums decerned for aliment.

4. Subject to the provisions herein-after contained, any sheriff or sheriff substitute may commit to prison for a period not exceeding six weeks, or until payment of the sum or sums of aliment, and expenses of process decerned for, or such instalment or instalments thereof as the sheriff or sheriff substitute may appoint, or until the creditor is otherwise satisfied, any person who wilfully fails to pay within the days of charge any sum or sums of aliment, together with the expenses of process, for which decree has been pronounced against him by any competent court; provided—

- (1.) That the warrant to commit to prison may be applied for by the creditor in the sum or sums decerned for without any concurrence:
- (2.) That the application shall be disposed of summarily, and without any written pleadings:
- (3.) That the failure to pay shall be presumed to have been wilful until the contrary is proved by the debtor; but that a warrant of imprisonment shall not be granted if it is proved to the satisfaction of the sheriff or sheriff substitute that the debtor has not, since the commencement of the action in which the decree was pronounced, possessed or been able to earn the means of paying the sum or sums in respect of which he has made default, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable:
- (4.) That a warrant of imprisonment may be granted of new, subject to the same provisions and conditions, at intervals of not less than six months, against the same person in respect of failure to pay the same sum or sums of aliment and expenses of process, if or in so far as still remaining due, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable, or any sums afterwards accruing due under the decree, or such instalment or instalments thereof as the sheriff or sheriff substitute shall consider reasonable:
- (5.) That the imprisonment shall not to any extent operate as a satisfaction or extinction of the debt, or interfere with the

creditor's other rights and remedies for its recovery:

- (6.) That the creditor, upon whose application the warrant of imprisonment is granted, shall not be liable to aliment or to contribute to the aliment of the debtor while incarcerated under such warrant: but that the incarcerated debtor shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of court.

5. No person shall, on account of failure to pay rates and assessments, be imprisoned for a longer period than six weeks in all at the instance of the rating authority or authorities of any one parish, combination, district, county, or burgh, in respect of his failure to pay the rates and assessments due for any one year, without prejudice to any other civil rights and remedies competent to the rating authority.

6. In order to amend the law in regard to imprisonment in the process of law burrows, the following provisions shall have effect: (that is to say,)

- (1.) It shall not be competent to issue letters of law burrows under the signet in the Court of Session or Court of Justiciary:
- (2.) Upon an application for law burrows being presented, the sheriff or sheriff substitute or justice of the peace shall immediately, and without taking the oath of the applicant, order the petition to be served upon the person complained against, and shall at the same time grant warrant to both parties to cite witnesses:
- (3.) At the diet of proof appointed, or at any adjourned diet, the application shall be disposed of summarily under the provisions of the Summary Jurisdiction Acts, and without any written pleadings or record of the evidence being kept, and expenses may be awarded against either party if and as it shall seem just:
- (4.) In every application for law burrows the parties shall be competent witnesses, and the sheriff or sheriff substitute, or justice of the peace, may grant the prayer of the petition upon the sworn testimony of one credible witness, although such witness may be a party:
- (5.) In the event of the sheriff or sheriff substitute, or justice of the peace, ordering caution to be found, the amount of caution shall be in his discretion:
- (6.) The sheriff or sheriff substitute, or justice of the peace, may, in the event of his ordering caution to be found, further

order that the party complained against shall, failing his finding caution, be imprisoned for a period not exceeding six months, if the order be made by a sheriff or sheriff substitute, and not exceeding fourteen days, if the order be made by a justice of the peace:

(7.) It shall be in the power of the sheriff or sheriff substitute, or justice of the peace, to order the party complained against to grant his own bond without caution for duly implementing the terms of the order, and failing such bond being granted within the time limited by the order, such order may farther direct that the party failing shall be imprisoned for such periods as aforesaid:

(8.) The applicant shall not be bound to aliment or contribute to the aliment of the person complained against when incarcerated; but the person so incarcerated shall be subject to the enactments and rules as to maintenance, work, discipline, and otherwise applicable to the class of prisoners committed for contempt of court:

Provided always, that except in so far as expressly altered by this section, nothing in this Act shall affect the existing law and practice in regard to the process of law burrows.

7. Where any person is at the commencement of this Act in custody under a warrant of imprisonment or other process in any case

in which he would not be liable to be apprehended or imprisoned or detained in custody after the commencement of this Act, such person shall, within twelve hours after the commencement of this Act, be discharged from such custody; but his apprehension, imprisonment, or discharge shall not affect the other rights or remedies of any creditor or other person in respect of any debt, claim, or demand against him.

8. With respect to the alimentering of civil prisoners entitled to aliment, the following provision shall have effect; (that is to say.)

The gaoler or other person in whose hands the sum of ten shillings shall have been deposited, in terms of the Act sixth George the Fourth, chapter sixty-two, as a means of and security for the aliment of any civil prisoner, shall, as from the date of his imprisonment, pay out of the same the aliment of the said prisoner at the rate of not exceeding one shilling per diem: Provided that, if such prisoner shall not apply for or shall not be found entitled to aliment, any sum expended under this sub-section shall be a debt due by him to the incarcerating creditor.

9. This Act shall be read and construed together with the Debtors (Scotland) Act, 1880, and the Bankruptcy and Cessio (Scotland) Act, 1881.

CHAP. 43.

Bills of Sale Act (1878) Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Construction of Act.*
4. *Bill of sale to have schedule of property attached thereto.*
5. *Bill of sale not to affect after acquired property.*
6. *Exception as to certain things.*
7. *Bill of sale with power to seize except in certain events to be void.*
8. *Bill of sale to be void unless attested and registered.*
9. *Form of bill of sale.*
10. *Attestation.*
11. *Local registration of contents of bills of sale.*
12. *Bill of sale under 30l. to be void.*
13. *Chattels not to be removed or sold.*
14. *Bill of sale not to protect chattels against poor and parochial rates.*
15. *Repeal of part of Bills of Sale Act, 1878.*
16. *Inspection of registered bills of sale.*
17. *Debentures to which Act not to apply.*
18. *Extent of Act.*

SCHEDULE.

An Act to amend the Bills of Sale Act,
1878. (18th August 1882.)

WHEREAS it is expedient to amend the Bills of Sale Act, 1878:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Bills of Sale Act (1878) Amendment Act, 1882; and this Act and the Bills of Sale Act, 1878, may be cited together as the Bills of Sale Acts, 1878 and 1882.

2. This Act shall come into operation on the first day of November one thousand eight hundred and eighty-two, which date is hereinafter referred to as the commencement of this Act.

3. The Bills of Sale Act, 1878, is hereinafter referred to as "the principal Act," and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; but unless the context otherwise requires shall not apply to any bill of sale duly registered before the commencement of this Act so long as the registration thereof is not avoided by non-renewal or otherwise.

The expression "bill of sale," and other expressions in this Act, have the same meaning as in the principal Act, except as to bills of sale or other documents mentioned in section four of the principal Act, which may be given otherwise than by way of security for the payment of money, to which last-mentioned bills of sale and other documents this Act shall not apply.

4. Every bill of sale shall have annexed thereto or written thereon a schedule containing an inventory of the personal chattels comprised in the bill of sale; and such bill of sale, save as herein-after mentioned, shall have effect only in respect of the personal chattels specifically described in the said schedule; and shall be void, except as against the grantor, in respect of any personal chattels not so specifically described.

5. Save as herein-after mentioned, a bill of sale shall be void, except as against the grantor, in respect of any personal chattels specifically described in the schedule thereto of which the grantor was not the true owner at the time of the execution of the bill of sale.

6. Nothing contained in the foregoing sections of this Act shall render a bill of sale void in respect of any of the following things; (that is to say,)

- (1.) Any growing crops separately assigned or charged where such crops were actually growing at the time when the bill of sale was executed.
- (2.) Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.

7. Personal chattels assigned under a bill of sale shall not be liable to be seized or taken possession of by the grantee for any other than the following causes:—

- (1.) If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security;
- (2.) If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes;
- (3.) If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises;
- (4.) If the grantor shall not, without reasonable excuse, upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes;
- (5.) If execution shall have been levied against the goods of the grantor under any judgment at law:

Provided that the grantor may within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court, or to a judge thereof in chambers, and such court or judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just.

8. Every bill of sale shall be duly attested, and shall be registered under the principal Act within seven clear days after the execution thereof, or if it is executed in any place out of England then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted

immediately after the execution thereof: and shall truly set forth the consideration for which it was given; otherwise such bill of sale shall be void in respect of the personal chattels comprised therein.

9. A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void unless made in accordance with the form in the schedule to this Act annexed.

10. The execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses, not being a party or parties thereto. So much of section ten of the principal Act as requires that the execution of every bill of sale shall be attested by a solicitor of the Supreme Court, and that the attestation shall state that before the execution of the bill of sale the effect thereof has been explained to the grantor by the attesting witness, is hereby repealed.

11. Where the affidavit (which under section ten of the principal Act is required to accompany a bill of sale when presented for registration) describes the residence of the person making or giving the same or of the person against whom the process is issued to be in some place outside the London bankruptcy district as defined by the Bankruptcy Act, 1869, or where the bill of sale describes the chattels enumerated therein as being in some place outside the said London bankruptcy district, the registrar under the principal Act shall forthwith and within three clear days after registration in the principal registry, and in accordance with the prescribed directions, transmit an abstract in the prescribed form of the contents of such bill of sale to the county court registrar in whose district such places are situate, and if such places are in the districts of different registrars to each such registrar.

Every abstract so transmitted shall be filed, kept, and indexed by the registrar of the county court in the prescribed manner, and any person may search, inspect, make extracts from, and obtain copies of the abstract so registered in the like manner and upon the like terms as to payment or otherwise as near as may be as in the case of bills of sale registered by the registrar under the principal Act.

12. Every bill of sale made or given in consideration of any sum under thirty pounds shall be void.

13. All personal chattels seized or of which possession is taken after the commencement of this Act, under or by virtue of any bill of sale (whether registered before or after the commencement of this Act), shall remain on the premises where they were so seized or so taken possession of, and shall not be removed or sold until after the expiration of five clear days from the day they were so seized or so taken possession of.

14. A bill of sale to which this Act applies shall be no protection in respect of personal chattels included in such bill of sale which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes and poor or other parochial rates.

15. The eighth and the twentieth sections of the principal Act, and also all other enactments contained in the principal Act which are inconsistent with this Act are repealed, but this repeal shall not affect the validity of anything done or suffered under the principal Act before the commencement of this Act.

16. So much of the sixteenth section of the principal Act as enacts that any person shall be entitled at all reasonable times to search the register and every registered bill of sale upon payment of one shilling for every copy of a bill of sale inspected is hereby repealed, and from and after the commencement of this Act any person shall be entitled at all reasonable times to search the register, on payment of a fee of one shilling, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled at all reasonable times to inspect, examine, and make extracts from any and every registered bill of sale without being required to make a written application, or to specify any particulars in reference thereto, upon payment of one shilling for each bill of sale inspected, and such payment shall be made by a judicature stamp: Provided that the said extracts shall be limited to the dates of execution, registration, renewal of registration, and satisfaction, to the names, addresses, and occupations of the parties, to the amount of the consideration, and to any further prescribed particulars.

17. Nothing in this Act shall apply to any debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital stock or goods, chattels, and effects of such company.

18. This Act shall not extend to Scotland or Ireland.



SCHEDULE.

FORM OF BILL OF SALE.

This Indenture made the _____ day of _____, between *A.B.* of _____ of the one part, and *C.D.* of _____ of the other part, witnesseth that in consideration of the sum of £ _____ now paid to *A.B.* by *C.D.*, the receipt of which the said *A.B.* hereby acknowledges [or *whatever else the consideration may be*], he the said *A.B.* doth hereby assign unto *C.D.*, his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £ _____, and interest thereon at the rate of _____ per cent. per annum [or *whatever else may be the rate*]. And the said *A.B.* doth further agree and declare that he will duly pay to the said *C.D.* the principal sum aforesaid, together with the interest then due, by equal payments of £ _____ on the _____ day of _____ [or *whatever else may be the stipulated times or time of payment*]. And the said *A.B.* doth also agree with the said *C.D.* that he will [here insert terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security].

Provided always, that the chattels hereby assigned shall not be liable to seizure or to be taken possession of by the said *C.D.* for any cause other than those specified in section seven of the Bills of Sale Act (1878) Amendment Act, 1882.

In witness, &c.
Signed and sealed by the said *A.B.* in the presence of me *E.F.* [add witness' name, address, and description].

CHAP. 44.

Pensions Commutation Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *39 & 40 Vict. c. 73.*
3. *Power to commute a portion of a pension under 34 & 35 Vict. c. 36.*

An Act to authorise the Commutation of a portion of a Pension in pursuance of the Pensions Commutation Act, 1871. (18th August 1882.)

WHEREAS by the Pensions Commutation Act, 1871, the Treasury are authorised, on the application of any person to whom that Act applies, to commute his pension in the manner provided by that Act, and in accordance with the regulations from time to time made by the Treasury:

And whereas doubts have arisen as to the power of the Treasury under the said Act to commute a portion of a pension, and it is expedient to remove such doubts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament

assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Pensions Commutation Act, 1882.

2. This Act and the Pensions Commutation Acts, 1871 and 1876, may be cited as the Pensions Commutation Acts, 1871 to 1882.

3. Where the Treasury have power, in pursuance of the Pensions Commutation Act, 1871, to commute the pension of any person, the Treasury shall also have power to commute a portion of such pension, and the provisions of the Pensions Commutation Acts, 1871 and 1876, shall apply accordingly to the portion of the pension in like manner, so nearly as circumstances admit, as they apply to the whole pension.

An Act to amend the Isle of Man (Officers) Act, 1876.

(18th August 1882.)

WHEREAS by the Isle of Man (Officers) Act, 1876, provision was made respecting the superannuation allowances or pensions of persons employed in permanent offices in the service of Her Majesty in the Government of the Isle of Man, in cases where they have served Her Majesty in some other civil capacity:

And whereas it is expedient to amend the said Act as regards the calculation of the pension of such persons:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where a superannuation allowance is granted under the Superannuation Act, 1859, to any person who has been employed in a per-

manent office in the service of Her Majesty in the Government of the Isle of Man, and also in the permanent Civil Service of the State, and his salary and emoluments in respect of the permanent Isle of Man office or the office in the permanent Civil Service formerly held by him were greater than the salary and emoluments of the office from which he is retiring, the allowance in respect of so many years as he was entitled (whether as years of actual service or as years added to actual service) to reckon towards superannuation at the date of the cessation of the said greater salary and emoluments may be calculated on the basis of the same amount of salary and emoluments on which it would have been calculated if the said person had retired at the said date.

2. This Act may be cited as the Isle of Man (Officers) Act, 1882, and shall be construed as one with the Isle of Man (Officers) Act, 1876, and together with that Act may be cited as the Isle of Man (Officers) Acts, 1876 and 1882.

CHAP. 47.

Arrears of Rent (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

Settlement of Arrears of Rent.

1. *Settlement by Land Commission of arrears of rent.*
2. *Modification in case of evicted tenant when restored to holding.*
3. *Application of Act to existing leases.*

PART II.

Supplemental Provisions.

4. *Powers of Land Commission.*
 5. *Delegation of powers of Land Commission.*
 6. *Incorporated provisions of 33 & 34 Vict. c. 46.*
 7. *Punishment of fraudulent claim.*
 8. *Charge of liabilities under Act on Irish Church Temporalities Fund and Consolidated Fund.*
 9. *Definition of landlord.*
 10. *Limit of time.*
 11. *Exclusion of tenants of holdings of an aggregate valuation exceeding thirty pounds.*
 12. *Holding valued as part of larger tenement.*
 13. *Suspension of proceedings.*
 14. *Evidence.*
 15. *Cancellation of certain rentcharges under 44 & 45 Vict. c. 49. s. 59, in repayment of advances for arrears of rent.*
 16. *Arrears of rent how dealt with.*
 17. *Exemption in respect of public charges upon arrears of rent extinguished.*
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have been transferred as aforesaid, shall be entitled to receive from time to time the amount of such annuity from the revenues of India; and every civil servant, and every widow or child of a civil servant, who shall be a subscriber to the said fund, or shall be an incumbent annuitant of the said fund at or after the date of such notification, shall be entitled to the benefits to which they are entitled under the existing rules at the date of the passing of this Act, with the additional benefit in the case of widows of a pension of sixty pounds per annum, such additional benefit to take effect as from the first of April one thousand eight hundred and eighty-two.

Provided that nothing in this Act contained shall be held to preclude the Secretary of State for India in Council from assigning to the incumbents on and subscribers to the said fund, or to any such widow or child as aforesaid, any benefits in addition to those secured to them by this Act, if on considering the assets and liabilities of the said fund the Secretary of State for India in Council shall deem it reasonable so to do.

3. All notifications or applications on the part of the subscribers to or beneficiaries under the said fund which are required or prescribed by the rules of the said fund as existing at the date of this Act shall be given and made in such manner and to such person or persons as the Secretary of State for India in Council shall from time to time appoint.

4. From and after the passing of this Act there shall vest in the Secretary of State for India in Council all powers and authorities, discretionary or otherwise, which were prior to the date of this Act vested in the trustees of the said fund, or the subscribers thereto in general meeting: Provided always, that notwithstanding anything herein contained, the Secretary of State for India in Council shall,

as far as may be practicable, conform to and adopt the practice heretofore followed in the management of the said fund.

5. Provided that nothing in this Act shall prejudice any claim which may be made by any subscriber to or beneficiary under the said fund, or by the representatives of any such subscriber or beneficiary upon the funds so transferred, and in case any question shall arise between any such subscriber, or the representatives of any deceased subscriber, or the widow or a child of any such subscriber, or the representatives of any such widow or child on the one hand, and the Secretary of State for India in Council on the other, as to any liability or alleged liability of the said fund, such question shall be determined by Her Majesty's Court of Appeal in such manner as may be provided by any General Orders, or as the said Court may on special application think fit to prescribe, anything in the Statute of Limitations to the contrary notwithstanding.

6. And whereas it may be expedient that the Secretary of State for India in Council should have authority in like manner to accept the transfer of the assets, liabilities, and management of other institutions, known as the Bengal Civil Fund and the Madras Civil Fund, with the consent of the subscribers to the said institutions respectively: It shall be lawful for the managers or trustees to make over the assets, liabilities, and management of both or either of the said funds, and for the Secretary of State for India in Council to take and assume the same upon such terms as the Secretary of State for India in Council may approve, if at any time hereafter it shall appear by a vote, specially taken for the purpose, that a majority of not less than three-fourths of the subscribers to those institutions who may vote upon the question are in favour of such transfer.

CHAP. 46.

Isle of Man (Officers) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Calculation of superannuation allowance to person employed in Isle of Man.*
 2. *Short title.*
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An Act to amend the Isle of Man
(Officers) Act, 1876.

(18th August 1882.)

WHEREAS by the Isle of Man (Officers) Act, 1876, provision was made respecting the superannuation allowances or pensions of persons employed in permanent offices in the service of Her Majesty in the Government of the Isle of Man, in cases where they have served Her Majesty in some other civil capacity:

And whereas it is expedient to amend the said Act as regards the calculation of the pension of such persons:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Where a superannuation allowance is granted under the Superannuation Act, 1859, to any person who has been employed in a per-

manent office in the service of Her Majesty in the Government of the Isle of Man, and also in the permanent Civil Service of the State, and his salary and emoluments in respect of the permanent Isle of Man office or the office in the permanent Civil Service formerly held by him were greater than the salary and emoluments of the office from which he is retiring, the allowance in respect of so many years as he was entitled (whether as years of actual service or as years added to actual service) to reckon towards superannuation at the date of the cessation of the said greater salary and emoluments may be calculated on the basis of the same amount of salary and emoluments on which it would have been calculated if the said person had retired at the said date.

2. This Act may be cited as the Isle of Man (Officers) Act, 1882, and shall be construed as one with the Isle of Man (Officers) Act, 1876, and together with that Act may be cited as the Isle of Man (Officers) Acts, 1876 and 1882.

CHAP. 47.

Arrears of Rent (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

Settlement of Arrears of Rent.

1. *Settlement by Land Commission of arrears of rent.*
2. *Modification in case of evicted tenant when restored to holding.*
3. *Application of Act to existing leases.*

PART II.

Supplemental Provisions.

4. *Powers of Land Commission.*
5. *Delegation of powers of Land Commission.*
6. *Incorporated provisions of 33 & 34 Vict. c. 46.*
7. *Punishment of fraudulent claim.*
8. *Charge of liabilities under Act on Irish Church Temporalities Fund and Consolidated Fund.*
9. *Definition of landlord.*
10. *Limit of time.*
11. *Exclusion of tenants of holdings of an aggregate valuation exceeding thirty pounds.*
12. *Holding valued as part of larger tenement.*
13. *Suspension of proceedings.*
14. *Evidence.*
15. *Cancellation of certain rentcharges under 44 & 45 Vict. c. 49. s. 59. in repayment of advances for arrears of rent.*
16. *Arrears of rent how dealt with.*
17. *Exemption in respect of public charges upon arrears of rent extinguished.*

PART III.

Emigration.

18. *Power of guardians to borrow for emigration.*
19. *Orders for payment of loans may be made by Local Government Board.*
20. *Grants in aid of emigration.*
21. *Rules.*
22. *Power to appoint an additional member of the Land Commission.*
23. *Rules for carrying Act into effect.*
24. *Short title of Act.*

SCHEDULES.

An Act to make provisions respecting certain Arrears of Rent in Ireland.

(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Settlement of Arrears of Rent.

1. (1.) In the case of any holding to which the Land Law (Ireland) Act, 1881, applies, and which is valued under the Acts relating to the valuation of rateable property in Ireland at not more than thirty pounds a year, if on the application of the landlord and the tenant of such holding, or of either of them after ten days notice in the prescribed manner by the landlord or his agent to the tenant, or by the tenant to the landlord or his agent, the following circumstances (in this Act referred to as preliminary conditions) are proved to the satisfaction of the Irish Land Commission, namely,—

- (a.) That the rent payable in respect of the year of the tenancy expiring on the last gale day of the tenancy in the year one thousand eight hundred and eighty-one (which year of the tenancy is in this Act referred to as "the year expiring as aforesaid") has been satisfied on or before the thirtieth day of November one thousand eight hundred and eighty-two; and
 - (b.) That antecedent arrears of rent are due to the landlord; and
 - (c.) That the tenant is unable to discharge such antecedent arrears, without loss of his holding, or deprivation of the means necessary for the cultivation thereof,
- the Irish Land Commission (in this Act referred to as the Land Commission) may make an order for the payment to or for the benefit of the landlord of a sum equal to one half of such antecedent arrears, subject to the limi-

tation that the sum so paid shall not exceed the yearly rent payable in respect of the holding for the year of the tenancy next preceding the year expiring as aforesaid: Provided that for the purpose of application under the provisions of sections two, ten, and thirteen respectively of this Act, the Land Commission may in respect of such notice extend the periods in the said sections respectively mentioned for any time not exceeding ten days.

(2.) On such order for payment to or for the benefit of the landlord being made by the Land Commission, all such antecedent arrears of rent shall, subject as herein-after mentioned, be released and extinguished, and any judgment, decree, or security for the rent of the holding, and any judgment or decree for the recovery of the holding on account of the non-payment of rent, shall be vacated so far as regards any rent due in respect of the holding before the last gale day in the year expiring as aforesaid, but shall not be vacated so far as regards any rent subsequently accrued due, or any costs due in pursuance of such judgment, decree, or security. Provided that in the event of a sale of the tenancy within seven years from the making of such order the arrears of rent dealt with by such order and not satisfied by payment or remission shall, to an amount not exceeding one year of such arrears nor one half of the proceeds of such sale, be a sum payable to the landlord out of such proceeds within the meaning of the Land Law (Ireland) Act, 1881. For the purposes of this Act the saleable value of the tenant's interest shall, so far as the Commissioners think it reasonable, be taken into account in ascertaining whether the tenant is unable to discharge such antecedent arrears.

(3.) All payments on account of rent made by the tenant to the landlord in or subsequent to the year expiring as aforesaid, but before the thirtieth day of November one thousand eight hundred and eighty-two, shall be deemed to have been made on account of the rent payable in respect of the year expiring as aforesaid, to the extent to which the rent for that year had at the time of such payment accrued

due, provided that where it appears that, according to the ordinary course of dealing between the landlord and tenant of a holding, the rent of such holding has usually been paid on some day after the day on which it became legally due, the usual day of payment shall be deemed, for the purposes of this sub-section, to be the time at which the rent accrued due.

(4.) A remission by the landlord of the whole or any part of the rent payable in respect of the year expiring as aforesaid shall be deemed to be a satisfaction of the amount of rent so remitted; provided that no remission made for any previous year shall be credited to the year expiring as aforesaid.

(5.) The Land Commission, if satisfied on the occasion of any application made under this Act that it is just so to do, may authorise the tenant to make to the Land Commission any payments on account of the rent payable in respect of the year of the tenancy expiring as aforesaid which the tenant might otherwise have made to the landlord, and such payment shall for the purposes of this Act be deemed to have been made to the landlord, and the Land Commission shall, having first given public notice in the prescribed manner, cause any sum so paid by the tenant to be paid to the person appearing to such Commission to be entitled thereto as landlord.

(6.) Any money payable under this Act by the Land Commission to the landlord shall be paid to the person entitled as landlord without cost, except so far as may be caused by disputed title or by the person so entitled failing to comply with the rules for the time being in force relating to the payment of such money. Provided always, that where two or more parties are entitled to the arrears, the Land Commission shall have power to decide the rights of the parties, and the proportion in which the sums so ordered to be paid to or for the benefit of the landlord shall be divided amongst them.

2. Any tenant evicted from his holding for nonpayment of rent, or whose tenancy has been purchased for the landlord at any sale under and by virtue of any writ of execution founded upon a judgment obtained by the landlord for an arrear of rent due in respect of such holding, may, if his landlord agrees to reinstate him, apply, with the consent of his landlord in the prescribed manner, during the time limited for applications under this Act to the Land Commission under this Act, and the Land Commission may make an order under this Act in the same manner as if the tenant had not been evicted or his tenancy had not been sold.

Any tenant evicted for nonpayment of rent

whom the landlord does not agree to reinstate, but who is entitled to apply for a writ of restitution in pursuance of the seventy-first section of the Landlord and Tenant Law Amendment Act (Ireland), 1860, may apply during the time limited for applications under this Act to the Land Commission under this Act, and the Land Commission may make an order under this Act in the same manner as if the tenant had not been evicted, and on an application being made to the court having cognizance of the case for a writ of restitution, that court shall deal with the case as if the tenant had paid all arrears of rent up to the last gale day in the year expiring as aforesaid, and on compliance by the tenant with the other conditions of the said Act of 1860 the court may order his restitution: Provided that an order of the Land Commission under this section shall not take effect until and unless the tenant is restored to his holding.

For the purpose of enabling any such evicted tenant to make an application to the Land Commission under the first section of this Act, the Land Commission shall have power, on application made by him within six months from the time of eviction, and during the time limited for applications under this Act, to enlarge the time during which he may redeem his tenancy for a period not exceeding three months, subject to such terms and conditions as may seem just.

§ 3. This Act shall apply to holdings subject to existing leases within the meaning of section twenty-one of the Land Law (Ireland) Act, 1881, in like manner as it applies to any other holding.

PART II.

Supplemental Provisions.

4. For the purposes of this Act the Land Commission may exercise all such powers vested in them for the purpose of the execution of the Land Law (Ireland) Act, 1881, as are referred to in the first schedule to this Act, and shall have full jurisdiction to hear and determine all matters, whether of law or fact, that may be required to be determined by them for the purposes of this Act, and they shall have power to retain in their hands any moneys which may be payable to a landlord until they have decided to whom such moneys are legally payable, and they shall in respect of such moneys have all the powers vested in the court by the thirty-seventh section of the Landlord and Tenant (Ireland) Act, 1870, in respect of the distribution of purchase moneys.

in the same manner as if the moneys so payable to the landlord were purchase moneys.

The Land Commission shall not be subject to be restrained in the execution of their powers under this Act by the order of any court, nor shall any proceedings before them be removed by certiorari into any court.

The Land Commission may of its own motion, or shall on the application of any party to any proceeding pending before it unless it considers such application frivolous and vexatious, state a case in respect of any question of law arising in such proceedings, and refer the same for the consideration and decision of Her Majesty's Court of Appeal in Ireland.

5. The Land Commission may from time to time by rule under this Act or by any special order delegate any power or duty under this Act, except the power of making rules or appointments, to the Civil Bill Court or to any Sub-Commission, or any member of the Land Commission or any member of a Sub-Commission, being a barrister-at-law or solicitor, and every Court, Sub-Commission, or member of the Land Commission or Sub-Commission to whom such power or duty shall be delegated, shall, in reference thereto, and subject to an appeal on matter of law to the Land Commission, on and in such conditions and circumstances as may be prescribed, have all the powers of the Land Commissioners.

The Land Commission may, from time to time, with the assent of the Treasury, appoint fit persons possessing such qualifications as may be prescribed by the Treasury to investigate and report as to the existence or non-existence in the case of holdings of the preliminary conditions required to be proved for the purpose of orders under this Act and as to the values of such holdings, and the Land Commission may adopt any such report, or any part thereof, as may seem expedient, and may from time to time direct a fresh investigation to take place, or may themselves take evidence in respect of the subject matter of such investigation.

Any person or persons appointed in pursuance of this section may for the purposes of the investigation administer an oath.

The Commissioners of Her Majesty's Treasury may be represented on any inquiry under this Act by any person nominated by them for such purpose.

6. In the case of any persons interested in any matter arising under this Act, the provisions of sections fifty-nine, sixty, and sixty-one of the Landlord and Tenant (Ireland) Act,

1870, as to administration on the death of a tenant, and as to provision for married women, and as to provision for other persons under disability, shall apply to any proceedings under this Act in the same manner as if the said sections were herein enacted, and in terms made applicable to this Act.

7. If in any proceeding under this Act any person concerned in such proceeding as principal or agent, with intent to substantiate a false claim, suppresses, attempts to suppress, or is privy to the suppression of any document, or of any fact, or produces or is privy to the production of any false evidence, the person so offending shall be guilty of a misdemeanour, and upon conviction shall be liable, in the discretion of the court, either to imprisonment for a term not exceeding two years, with or without hard labour, or to a fine not exceeding five hundred pounds.

Any sum paid by the Land Commission in respect of any false claim shall be a debt due to the Crown from the person on behalf of whom it is paid.

8. Any liabilities incurred by the Land Commission on account of payments to landlords in respect of arrears of rent under this Act shall be primarily a charge on the Irish Church Temporalities Fund, and, subject thereto, on the Consolidated Fund in such manner as may hereafter be provided by Parliament.

The Irish Church Temporalities Fund means the fund under the control of the Land Commission under the provisions of the Irish Church Act Amendment Act, 1881.

9. The expression "landlord" in relation to a holding means, for the purposes of this Act, any person for the time being entitled to receive the rents and profits of such holding.

10. An application under this Act shall not be made by any landlord or tenant after the last day of December one thousand eight hundred and eighty-two, except by leave of the Land Commission, and in no case after the thirtieth day of April one thousand eight hundred and eighty-three, and the Land Commission shall grant such leave only in cases where it is proved to their satisfaction that injustice would be done in case leave were refused.

11. An order under this Act shall not be made in the case of a holding the tenant of which is possessed of two or more holdings in Ireland to which the Land Law (Ireland) Act, 1881, applies, and the valuation of which under the Acts relating to the valuation of

rateable property in Ireland amounts in the whole to more than thirty pounds a year.

And the question as to whether the tenant of any holding in respect of which an application may be made under this Act is or is not possessed of such holdings as are in this section in that behalf mentioned may be investigated and reported on by any person appointed under this Act to investigate and report on the preliminary conditions for an order under this Act.

12. Where a holding, as defined by the Land Law (Ireland) Act, 1881, is not separately valued, but forms part of a larger parcel of land valued as one tenement under the Acts relating to the valuation of rateable property in Ireland, such holding shall be deemed to be a separate holding for the purposes of this Act, and to be valued under the said Acts at such proportion of the sum at which the whole of the said tenement is valued as the rent of the holding bears to the rent of the whole of the said tenement.

13. Where any proceedings for the recovery of the rent of a holding to which this Act applies, or for the recovery of such holding for non-payment of rent on account of the rent in respect of the year expiring as aforesaid and antecedent arrears, have been taken before or after an application under this Act in respect of such holding, and are pending before such application is disposed of, the court before which such proceedings are pending shall, if the provisions of section one, sub-section (a.), have been complied with, and on such terms and conditions as the court may direct, postpone or suspend such proceedings until the application under this Act has been disposed of.

14. Evidence required for the purposes of this Act shall, whenever practicable, be taken upon oath, and may be either oral or by affidavit, and affidavits of the landlord, or his agent, and the tenant may be accepted as *prima facie* evidence of all or any of the preliminary conditions or other matters.

Affidavits for the purposes of this Act may be taken and sworn before any person authorised by this or any other Act to administer an oath.

15. Whereas by section fifty-nine of the Land Law (Ireland) Act, 1881, it is provided, that where it appeared to the Court, on the joint application made on or before the twenty-eighth day of February one thousand eight hundred and eighty-two, of the landlord and tenant of any holding valued at a sum not

exceeding thirty pounds a year, that the tenant had paid the whole of the rent payable in respect of the year of the tenancy expiring on the gale day next before the twenty-second day of August one thousand eight hundred and eighty-one, and that antecedent arrears were due, the Land Commission might make in respect of such antecedent arrears an advance of a sum not exceeding one year's rent of the holding and not exceeding half the antecedent arrears, and thereupon the Court should by order declare the holding to be charged with the repayment to the Land Commission of the said advance by a rentcharge payable and calculated as in the said section mentioned:

And whereas in pursuance of the said section divers advances have been made in respect of the arrears of rent on divers holdings, and such holdings have been charged with the repayment of the said advances by such rentcharges as in the said section mentioned, and it is expedient to amend the said section: Be it therefore enacted as follows:

Where in pursuance of section fifty-nine of the Land Law (Ireland) Act, 1881, an advance has been made, before the passing of this Act, towards the payment of the arrears due in respect of any holding, and a rentcharge has been charged on such holding for the repayment of such advance, the Land Commission, if it is proved to their satisfaction on the application of either the landlord or the tenant of the holding that the tenant was, at the date of the said advance being made, unable to discharge the arrears in respect of which the advance was made, may by order cancel the said rentcharge, and the same shall cease to be payable, whether by the landlord or the tenant, as from the last day appointed for payment of the same next before the date of the order, and the amount of the said advance shall be a charge on the Irish Church Temporalities Fund.

16. Where it appears to the Land Commission, on the joint application of the landlord and tenant of any such holding valued at a sum not exceeding fifty pounds a year, that the tenant has paid the whole (or such sum as the landlord may be willing to accept in full discharge of the whole) of the rent payable in respect of the year of the tenancy expiring as aforesaid, and that the tenant has obtained a receipt in full for such rent, and that antecedent arrears are due, the Land Commission may make to the landlord, in respect of such antecedent arrears, an advance of a sum not exceeding one year's rent of the holding, and not exceeding half the antecedent arrears, and thereupon the court shall by order declare the

holding to be charged with the repayment of the advance to the Land Commission, by a rentcharge payable half-yearly on the first day of January and the first day of July during the thirty-five years from the date specified in the order, and calculated at the rate of five pounds by the hundred, by the year, of the advance.

The charge declared by the order as aforesaid shall have priority over all charges affecting the holding, except quit-rent and crown rent, and sums payable to the Commissioners of Public Works, and shall be payable by the tenant of the holding for the time being, and shall be levied and collected in manner herein-after provided; and in the event of the tenant failing to pay any half-yearly instalment of the said charge for the space of twelve months after the same shall have accrued due, then and in every such case the amount of such instalments, together with the entire of the unpaid residue of such charge, with interest as ascertained by the Land Commission, shall forthwith be payable by the tenant, and the amount thereof shall be raised by sale of the tenancy in the prescribed manner.

The half-yearly instalments of such charge shall be from time to time collected by the collector authorised to collect poor rate in the electoral division in which such holding is situate; and for the purpose of such collection every collector shall have all such powers and authorities as he shall for the time being possess for collecting and recovering poor rate, and shall and may collect and levy the same accordingly from the tenant liable to pay the same, notwithstanding that such tenant may not be liable to pay poor rate.

For the purpose of such collection the Land Commission shall, in each half-year, transmit to the clerk of every union, within which any holding or holdings charged as aforesaid shall be situate, a warrant under the seal of the Land Commission, setting forth the names of the tenants within such union liable to pay such charges or the instalments thereof, and the amount due by each respectively, and such warrant shall be judicially noticed in all proceedings in court, and shall be conclusive evidence of the arrears due by such tenants respectively, and of their liability to pay the same.

The collector shall be paid by the Land Commission such remuneration, not exceeding one shilling in the pound of his collection, as the Land Commission, with the consent of the Treasury, may determine, and the clerk of the union may be paid such remuneration (if any) as the Land Commission may with the like consent determine.

Every such collector shall pay and account for the sums collected or collectable by him under this Act to the guardians of the union in which such holding is situate in the prescribed form; and the guardians shall transmit the amounts from time to time received by them as aforesaid to the Land Commission under the prescribed regulations.

In the event of such default by the tenant for the space of twelve months as aforesaid, it shall be lawful for the county court of the county in which the holding is situate, on the application of the Land Commission, to order a sale of such tenancy, which shall be sold, and the proceeds of such sale dealt with by the said county court in the prescribed manner.

If the proceeds of any such sale fail to realise the amount ascertained by the Land Commission as aforesaid, together with the cost of sale, the amount of the deficiency shall be paid by the landlord of the said holding, and shall be a charge upon his estate and interest therein, and shall be collected and levied in the prescribed manner: Provided, that on any transfer of the tenant's interest in the holding by sale, the principal sum and interest, if any, remaining due to the Land Commission, shall be paid out of the purchase money to the Land Commission.

On the order of the Land Commission being made as aforesaid in relation to any holding such antecedent arrears shall be deemed to be absolutely released.

The landlord and tenant may agree that any rent paid by the tenant in or subsequent to the year expiring as aforesaid shall be deemed, for the purposes of this section, to have been paid in respect of the rent due for that year, and not in respect of arrears of rent.

Where arrears of rent in respect of a holding are due to some person or persons besides the landlord the advance made under this section shall be rateably distributed amongst the persons entitled thereto.

An application for an advance under this section shall not be made after the periods mentioned in the tenth clause aforesaid.

The omission or refusal by either landlord or tenant of any holding to join with the other of them in obtaining a loan from the Land Commission under this section shall not prejudice any other application or proceeding which either of them may make or institute under this Act or the Landlord and Tenant (Ireland) Act, 1870, or the Land Law (Ireland) Act, 1881, in relation to such holding.

The Land Commission shall, at such time after the expiration of each period of twelve months as the Treasury may from time to time

appoint, make up an account showing for the said period of twelve months the amount of all such payments due to them in respect of rent-charges payable to them under this section as they have failed to recover at the expiration of the said period.

Whenever, in the case of any tenant evicted for non-payment of rent, or in case the holding of the tenant has been sold and purchased by the landlord, and possession taken thereof by him, since the first day of May one thousand eight hundred and eighty, the landlord agrees to reinstate such tenant on the terms in this section set forth, this section shall apply as if such tenant had not been so evicted from his holding.

17. Where, in the case of a holding of which any person is owner, antecedent arrears of rent due in respect of any year or years, or portion of a year, have been extinguished in pursuance of this Act, and any public charge or tax accrued during such year or years, or portion of year or years, is due from such person as or in consequence of his being owner of such holding, then, on proof to the satisfaction of the Land Commission that the owner has, during such time as aforesaid, received no rent, or an amount of rent less than the full rent, such public charges or taxes shall, if no rent has been received, be wholly remitted, and if an amount of rent less than the full rent has been received, be remitted in proportion to the amount of rent not received.

Where a person has paid any public charges or taxes which, if not paid, would be remitted under this section, the amount which would have been so remitted shall be allowed as a deduction from any future payment or payments of the public charges or taxes of the same description, or may be recovered as a debt from the authority to whom it may have been paid.

Any payment which an owner may receive under this Act in respect of arrears of rent shall, for the purposes of this section, be taken into account as rent.

The Land Commission shall ascertain, for the purposes of this section, in such manner as they think best calculated to ascertain the truth, the amount of public charges or taxes due in any year or portion of a year from a person as or in consequence of his being owner of a holding.

"Public charges or taxes" means tithe rentcharge payable to the Land Commission, income tax, quit-rent, or any of such charges or taxes.

PART III.

Emigration.

18. From and after the passing of this Act, the board of guardians of any union in Ireland are authorised to borrow money for the purpose of defraying or assisting to defray the expenses of the emigration of poor persons resident within their union, or any electoral division thereof, in manner provided by the Poor Law Amendment (Ireland) Act, 1849, as amended by subsequent Acts, subject to the following modifications; (that is to say),

- (1.) The provisions of the said Act in relation to the repayment of the advance by annual instalments shall not apply;
- (2.) The advances may be made by the Commissioners of Public Works out of any moneys granted to them for the purpose of loans in place of the Public Works Loans Commissioners;
- (3.) Every such advance made by the Commissioners of Public Works shall bear interest at the rate of three-and-a-half per centum per annum, or at such other rate as the Treasury may from time to time fix, in order to enable the advance to be made without loss to the Exchequer;
- (4.) Every such advance made by the Commissioners of Public Works, and the interest thereon, shall be repaid within such period from the date of the advance, not being less than fifteen years nor more than thirty years, as the Treasury may from time to time fix.

For the purposes of this Act the Poor Law Amendment (Ireland) Act, 1849, means the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty; chapter one hundred and four.

19. If at any time the Commissioners of Public Works in Ireland certify that any sum remains due to them from the board of guardians of any union on account of any loan or advance made under this Act, and is then payable to the Commissioners, the Local Government Board shall, by order under their seal, require the guardians of the union to pay the sum so certified, and shall send copies of such order to the board of guardians and to the treasurer of the union; and thereupon the treasurer of the union shall, out of any money then in his hands to the credit of the guardians, or if such money is insufficient for the purpose, then out of all moneys subsequently received by him on account of the guardians, pay over the amount mentioned in the order to the Commissioners of Public Works. The guardians of the union shall debit the several electoral divisions with such proportions of

that sum as may be payable by such electoral divisions respectively.

20. The Treasury may from time to time authorise the Commissioners of Public Works to make, subject to the regulations of the Treasury, grants to the board of guardians of any union, or such other body or persons and on such terms as the Lord Lieutenant may approve, for emigration purposes.

The moneys so granted shall be applied in accordance with the said regulations for the same purposes as moneys borrowed under the provisions of this Act.

The sums granted by the Commissioners of Public Works shall not exceed one hundred thousand pounds in the whole, and the sums granted shall not exceed five pounds per each person.

Such grants shall only be made for the benefit of the unions mentioned in the second schedule to this Act, and of such other unions or electoral divisions as may from time to time be settled by the Local Government Board, with the consent of the Lord Lieutenant: Provided that such unions are situate wholly or in part in some county specified in the schedule to the public notice issued by the Commissioners of Public Works in Ireland on the twenty-second day of November one thousand eight hundred and seventy-nine, that is to say, the counties of Donegal, Clare, Cork (West Riding), Kerry, Galway, Leitrim, Mayo, Roscommon, and Sligo.

Each grant shall only be made on the recommendation of the Lord Lieutenant, stating that the Lord Lieutenant is satisfied that the guardians of the union are unable, without unduly burdening the ratepayers, to make adequate provision, by borrowing under the powers conferred upon them by this Act, or otherwise, for the emigration purposes of the union, and that proper arrangements have been made for securing the satisfactory emigration of such persons.

The money required for the purpose of grants under this section shall be paid by the Land Commission to the Commissioners of Public Works, and shall be part of the liabilities of the Land Commission, and be a charge primarily upon the Irish Church Temporalities Fund, and, subject thereto, on the Consolidated Fund, in such manner as may be provided by Parliament.

21. The Lord Lieutenant may from time to time make provision that arrangements shall be made for securing the satisfactory emigration of persons for whom means of emigration are provided under this Act, by prescribing rules in relation to such matters, and for

the employment of special agents for that purpose, and otherwise as he thinks expedient. And any grants made under this Act for emigration purposes shall be applicable to defraying the expenses of such arrangements in such manner as the Lord Lieutenant directs.

22. In addition to the three persons named as commissioners in the Land Law (Ireland) Act, 1881, the Right Honourable the Viscount Monck is hereby constituted a member of the Irish Land Commission, at a salary of three thousand pounds a year, and for the term of two years from the passing of this Act.

Save as aforesaid, the provisions of the Land Law (Ireland) Act, 1881, which relate to the members of the Irish Land Commission, other than the Judicial Commissioner, shall apply to the said the Right Honourable the Viscount Monck, and to every person appointed as herein-after provided to a vacancy in his office, as if he had been named in the said Act a member of the Land Commission other than the Judicial Commissioner.

If and so often as during the said term of two years any vacancy occurs in the office of the said the Right Honourable the Viscount Monck by the death, resignation, inability to act, or otherwise, of the said the Right Honourable the Viscount Monck, or any person appointed in his place, Her Majesty may by warrant under the sign manual appoint some fit person to fill such vacancy; but the person so appointed shall only continue in office until the expiration of the said term of two years: Provided, that any act or matter which under the said Act shall be done or performed, or may be done or performed by three Land Commissioners sitting together, shall and may after the passing of this Act be in like manner done or performed by three of the Land Commissioners.

23. The Land Commission shall from time to time circulate forms of application and directions as to the mode in which applications are to be made under this Act, and may from time to time make, and when made may rescind, amend, or add to, rules with respect to the following matters, or any of them:

- (1.) The tribunal, whether Land Commission, civil bill court, sub-commission, or member of the Land Commission or a sub-commission by which such applications are to be heard;
- (2.) The mode of making applications under this Act, and the manner in which the tenant shall set out any property or effects of which such tenant may be possessed or entitled to, and which would

be applicable to the satisfaction of any arrears of rent, and the conduct of proceedings before any tribunal hearing applications under this Act:

- (3.) The conditions and circumstances on and in which appeals may be had to the Land Commission where applications have not been heard by the Land Commission:
- (4.) The mode in which the expenses of hearing any application under this Act or of any appeal are to be defrayed:
- (5.) The attendance and discharge of duties by the officers of the civil bill courts before the Land Commission and sub-commissions when holding sittings under this Act:
- (6.) The service of notices on persons interested, and any other matter by this Act directed to be prescribed:

(7.) The mode of collecting, suing for, recovering, and accounting for charges and instalments of charges, and the procedure for the sale of tenancies to raise the amount of such charges, and for dealing with the proceeds of such sales under this Act:

(8.) As to any other matter or thing, whether similar or not to those above-mentioned, in respect of which it may seem to the Land Commission expedient to make rules for the purpose of carrying this Act into effect.

Any rules made in pursuance of this section shall be of the same force as if enacted in this Act, and shall be judicially noticed.

24. This Act may be cited for all purposes as the Arrears of Rent (Ireland) Act, 1882.

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SCHEDULES.

FIRST SCHEDULE.

Powers of Land Law (Ireland) Act, 1881, referred to—
Section 48 (3).
Section 49.

SECOND SCHEDULE.

Unions.

Belmullet.	Newport.	Swinford.	Clifden.	Oughterard.
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CHAP. 48.

Reserve Forces Act, 1882.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title.*
2. *Commencement of Act.*

PART I.

ARMY RESERVE.

3. *Establishment of army reserve.*
4. *Procedure and term of service on enlistment or re-engagement.*
5. *Calling out army reserve in aid of the civil power.*
6. *Punishment of certain offences by army reserve men.*
7. *Men exempt from parish offices, &c.*

PART II.

MILITIA RESERVE.

8. *Establishment of militia reserve.*
9. *Term of service, and re-engagement.*
10. *Effect of enlistment on position as militiaman.*

PART III.

GENERAL.

Annual Training and calling out on Permanent Service of Reserves.

11. *Annual training of reserve forces.*
12. *Calling out reserve forces on permanent service.*
13. *Assembly of Parliament when reserve forces ordered to be called out on permanent service.*
14. *Service of reserve men called out.*
15. *Punishment for non-attendance for annual training or permanent service, &c.*
16. *Supplemental provisions as to deserters and absentees.*
17. *Punishment for inducing reserve man to desert or absent himself.*

Supplemental.

18. *Attestation of men enlisting in reserve forces.*
19. *Record of illegal absence of reserve men.*
20. *Orders and regulations as to reserve forces.*
21. *Exercise of powers vested in holder of military office.*
22. *Pensions of army reserve men.*
23. *Application to reserve forces of enactments respecting exemptions from tolls and conveyance of regular forces.*
24. *Notices.*
25. *Trial of offences.*
26. *Provisions as to offences triable both by court-martial and by court of summary jurisdiction.*
27. *Evidence.*
28. *Definitions.*
29. *Repeal of Acts.*

SCHEDULE.

An Act to consolidate the Acts relating
to the Reserve Forces.
(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Reserve Forces Act, 1882.

2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

PART I.

ARMY RESERVE.

3. It shall be lawful for Her Majesty to keep up a force in the United Kingdom, called the army reserve, to consist of two classes, as follows:—

Class I.—The first class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve either in the United Kingdom or elsewhere, and shall consist of men who, having served in any of Her Majesty's regular forces, may either be transferred to the reserve in pursuance of the Army Act 1881, or be enlisted or re-engaged in pursuance of this Act.

For the purpose of establishing a supplemental reserve it shall be lawful for Her Majesty to direct that the first class of the army reserve shall consist of two divisions.

and in the event of such direction being given men in the second division shall not be liable to be called out on permanent service until directions have been given for calling out the whole of the first division on such service.

Class II.—The second class shall consist of such number of men as may from time to time be provided by Parliament, and shall be liable, when called out on permanent service, to serve in the United Kingdom only, and shall consist of men who—

- (a.) being out-pensioners of Chelsea Hospital, or (on account of service in the Royal Marines) out-pensioners of Greenwich Hospital; or
 - (b.) having served in any of Her Majesty's regular forces for not less than the full term of their original enlistment,
- may be enlisted or re-engaged in pursuance of this Act.

4. Every man who enters the army reserve—

- (a.) If he enters otherwise than by transfer to the reserve in pursuance of the Army Act 1881, shall be enlisted; and
 - (b.) If he is re-engaged in the army reserve, shall be re-engaged,
- in such manner, and for a term of such length, and to begin at such date, as may be prescribed.

5. (1.) It shall be lawful for a Secretary of State, at any time when occasion appears to require, to call out the whole or so many as he thinks necessary of the men belonging to the army reserve, to aid the civil power in the preservation of the public peace.

(2.) It shall be lawful for any officer commanding Her Majesty's forces in any town or district, on the requisition in writing of any justice of the peace, to call out for the purpose aforesaid the men belonging to the army reserve who are resident in such town or district, or such of them as he may think necessary.

(3.) Any power by this section vested in a Secretary of State may as regards men resident in Ireland be exercised also by the Lord Lieutenant.

6. (1.) Where a man belonging to the army reserve—

- (a.) Fails without reasonable excuse on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve; or
- (b.) When required by or in pursuance of the orders or regulations in force under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement; or

(c.) Uses threatening or insulting language, or behaves in an insubordinate manner, to any officer or warrant or non-commissioned officer who in pursuance of the orders or regulations in force under this Act is acting in the execution of his office, and who would be the superior officer of such man if such man were subject to military law; or

(d.) By any fraudulent means obtains or is accessory to the obtaining of any pay or other sum contrary to the orders or regulations in force under this Act; or

(e.) Fails without reasonable excuse to comply with the orders or regulations in force under this Act,

he shall be guilty of an offence.

(2.) A man belonging to the army reserve who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

(a.) be liable to be tried by court-martial, and on conviction to suffer imprisonment, or such less punishment as in the Army Act 1881 mentioned; or

(b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for nonpayment of the fine;

and may in any case be taken into military custody.

(3.) Where a man belonging to the army reserve commits in the presence of any officer any offence under this section, or any offence under sub-section two or sub-section three of section one hundred and forty-two of the Army Act 1881 (relating to the punishment of personation), that officer may, if he thinks fit, order such man, in lieu of being taken into military custody, to be taken into custody by any constable, and brought before a court of summary jurisdiction for the purpose of being dealt with by that court.

(4.) A certificate purporting to be signed by an officer who is therein mentioned as an officer appointed to pay a man belonging to the army reserve, and stating that such man has failed on two consecutive occasions to comply with the orders or regulations in force under this Act with respect to the payment of the army reserve, shall, without proof of the signature or appointment of such officer, be evidence of such failure.

(5.) Where a man belonging to the army reserve is required by or in pursuance of the orders or regulations in force under this Act

to attend at any place, a certificate purporting to be signed by an officer or person who is mentioned in such certificate as appointed to be present at such place for the purpose of inspecting men belonging to the army reserve, or for any other purpose connected with such reserve, and stating that the man failed to attend in accordance with the said requirement, shall, without proof of the signature or appointment of such officer or person, be evidence of such failure.

7. A man belonging to the army reserve shall not be liable to serve the office of constable, or any other parochial, township, or borough office.

PART II.

MILITIA RESERVE.

8. (1.) It shall be lawful for Her Majesty to keep up a force in the United Kingdom called the militia reserve, consisting of such number of men as may from time to time be provided by Parliament.

(2.) A Secretary of State may cause to be enlisted from time to time in the militia reserve such militiamen as are willing to enlist themselves, not exceeding the prescribed number (if any) out of any particular corps.

9. (1.) Every man enlisted in the militia reserve shall be enlisted to serve either for six years or for the residue of the term of his militia engagement.

(2.) A man in the militia reserve who is re-engaged as a militiaman may also be re-engaged in the militia reserve for the prescribed period, not exceeding the term for which he is re-engaged as a militiaman.

10. (1.) A man belonging to the militia reserve shall, subject to the provisions of this Act, continue to be for all purposes a militiaman, and if he has enlisted in the militia reserve for a period which will expire subsequently to the expiration of his militia engagement he shall be deemed to have enlisted in the militia for such longer period.

(2.) A Secretary of State may in his discretion at any time discharge a man belonging to the militia reserve from his engagement, and a man so discharged shall thenceforth for the remainder of his engagement in the militia reserve be a militiaman only, and may be discharged from the militia or otherwise dealt with accordingly.

(3.) When a man has enlisted in the militia reserve his place in the militia shall not be

deemed vacant until directions are given for calling him out on permanent service, but when such directions are given his place shall be deemed vacant, and shall be filled in manner provided by law with respect to vacancies in the militia.

(4.) When a man who has been so called out is released from permanent service on the ground of his services being no longer required, he shall again become for the remainder (if any) of his engagement a militiaman in the corps to which he previously belonged, with rank and pay not lower than he was entitled to before he entered on permanent service; and if there is no vacancy, he shall be deemed to be a supernumerary until there is a vacancy.

PART III.

GENERAL.

Annual Training and Calling out on Permanent Service of Reserves.

11. (1.) All or any of the men belonging to the army reserve and the militia reserve respectively may be called out for annual training at such time or times, and at such place or places within the United Kingdom, and for such period or periods, as may be prescribed, not exceeding in any one year, in the case of a man belonging to the army reserve twelve days or twenty drills, and in the case of a man belonging to the militia reserve fifty-six days.

(2.) Every man so called out may during his annual training be attached to and trained with a body of the regular or auxiliary forces.

(3.) The annual training under this section of a man belonging to the militia reserve shall be in substitution for the annual training to which he is liable as a militiaman.

12. (1.) In case of imminent national danger or of great emergency, it shall be lawful for Her Majesty in Council by proclamation, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council and notified by the proclamation, if Parliament be not then sitting, to order that the army reserve and the militia reserve, or either of them, shall be called out on permanent service.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for calling out the forces or force mentioned in the proclamation, or all or any of the men belonging thereto.

(3.) Every such proclamation and the directions given in pursuance thereof shall be

obeyed as if enacted in this Act, and every man for the time being called out by such directions shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be called out on permanent service.

(4.) A proclamation under this section shall for the purposes of the Army Act 1881 be deemed to be a proclamation requiring soldiers in the reserve to re-enter upon army service.

13. Whenever Her Majesty orders the army reserve and militia reserve, or either of them, to be called out on permanent service, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

14. (1.) A man belonging to either of the reserve forces when called out on permanent service shall be liable to serve until Her Majesty no longer requires his services, so, however, that he shall not be required to serve for a period exceeding in the whole the remainder unexpired of his term of service in the reserve force to which he belongs, and any further period not exceeding twelve months during which as a soldier of the regular forces he can, under section eighty-seven of the Army Act 1881, be detained in service after the time at which he would otherwise be entitled to be discharged.

(2.) A man called out on permanent service shall during his service form part of the regular forces, and be subject to the Army Act 1881 accordingly, and the competent military authority within the meaning of Part Two of that Act may, if it seems proper, appoint him to any corps as a soldier of the regular forces, and the competent military authority within the meaning of the said Part Two may within three months after such appointment transfer him to any other corps of the regular forces, so, however, that he shall not without his consent be appointed or transferred to a corps which is not in the arm or branch in which he previously served.

(3.) Nothing in this section shall render a man in the second class of the army reserve liable to serve out of the United Kingdom, and such man may from time to time be transferred from one corps to another for the purpose of securing his non-liability to service out of the United Kingdom.

15. (1.) When a man belonging to the army or militia reserve is called out for annual train-

ing or on permanent service, or when a man belonging to the army reserve is called out in aid of the civil power, and such man, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at any time and place at which he is required upon such calling out to attend, he shall—

(a.) If called out on permanent service, or in aid of the civil power, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act 1881; and

(b.) If called out for annual training, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act 1881.

(2.) A man belonging to the army or militia reserve who commits an offence under this section, or under section twelve or section fifteen of the Army Act 1881, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

(a.) be liable to be tried by court-martial, and convicted and punished accordingly; or

(b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for nonpayment of the fine;

and may in any case be taken into military custody.

16. (1.) Section one hundred and fifty-four of the Army Act 1881 shall apply to a man who is a deserter or absentee without leave from the army or militia reserve within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2.) Any person who falsely represents himself to be a deserter or absentee without leave from the army or militia reserve shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

17. (1.) Any person who by any means whatsoever—

(a.) Procures or persuades any man belonging to the army or militia reserve to

commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any man belonging to the army or militia reserve to commit such offence; or

(b.) Knowing that a man belonging to the army or militia reserve is about to commit an offence of absence without leave within the meaning of this Act, aids or assists him in so doing; or

(c.) Knowing any man belonging to the army or militia reserve to be an absentee without leave within the meaning of this Act, conceals such man, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act 1881 shall apply as if a man belonging to the army or militia reserve were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act 1881; and any person who, knowing any man belonging to the army or militia reserve to be a deserter within the meaning of this Act or of the Army Act 1881, employs or continues to employ such man, shall be deemed to aid him in concealing himself within the meaning of the said section.

Supplemental.

18. (1.) Subject to the provisions of this Act, and save as is otherwise prescribed, a man enlisting in the army or militia reserve shall be attested in the same manner as a recruit in the regular forces, and the following sections of the Army Act 1881; (that is to say)—

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence,

shall apply in like manner as if they were herein re-enacted, with the substitution—

(a.) Of "man," or, if the context so requires,

"reserve man," for "soldier," and of "army reserve or militia reserve, as the case may be," for "regular forces"; and

(b.) In section one hundred, so far as relates to the militia reserve, of "one whole period of annual training" for "three months."

(2.) A man so enlisting may be attested by a regular officer, or by a militia officer, and the sections of the Army Act 1881 in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the army or militia reserve, be construed as if a justice of the peace in those sections included such an officer.

19. (1.) Where a man belonging to the army reserve or militia reserve is subject to military law, and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act 1881 may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days; and the record mentioned in this section may be entered in manner thereby provided, or in such regimental books and by such officer as may be prescribed.

(2.) Where a man belonging to the army reserve or militia reserve fails to appear at the time and place at which he is required upon being called out for annual training or on permanent service to attend, and his absence continues for not less than fourteen days, an entry of such absence shall be made by the prescribed officer in the prescribed manner and in the prescribed regimental books, and such entry shall be conclusive evidence of the fact of such absence.

20. (1.) Subject to the provisions of this Act, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the army reserve and the militia reserve or either of them, and with respect to other matters and things relating to the army reserve and the militia reserve or either of them, including any matter by this Act authorised to be prescribed, or expressed to be subject to orders or regulations.

(2.) Subject to the provisions of any such order, a Secretary of State may from time to time make, and when made revoke and vary, general or special regulations with respect to

any matter with respect to which Her Majesty may make orders under this section.

(3.) Where a man entered the army or militia reserve before the date of any order or regulation made under this Act, nothing in such order or regulation shall render such man liable, without his consent, to be appointed, transferred, or attached to any military body to which he could not, without his consent, have been appointed, transferred, or attached if the said order or regulation had not been made.

(4.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

21. (1.) Any power or jurisdiction given to, and any act or thing to be done by, to, or before any person holding any military office may in relation to the reserve forces be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

(2.) Where by this Act, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

22. Where, either before or after the passing of this Act, a man in the army reserve has been called out on permanent service, and at the termination of such service has been returned to the army reserve, and has become entitled to pension under any order or regulation in force under this Act (whether made before or after such calling out or return), the Commissioners of Chelsea Hospital shall have the same power to award and pay the said pension, and otherwise in relation to the said pension, as they would have if such man had been discharged from the army on reduction.

23. (1.) For the purpose of section one hundred and forty-three of the Army Act 1881, and of all other enactments relating to such duties, tolls, and ferries as are in that section mentioned, officers and men belonging to the army or militia reserve, when going to or returning from any place at which they are

required to attend, and for non-attendance at which they are liable to be punished, shall be deemed to be officers and soldiers of Her Majesty's regular forces on duty.

(2.) All enactments for the time being in force concerning the conveyance by railway or otherwise of any part of the regular forces, and their baggage, stores, arms, ammunition, and other necessities and things, shall apply as if the army and militia reserve were such part of the regular forces.

24. With respect to notices required in pursuance of the orders or regulations in force under this Act to be given to men belonging to the army or militia reserve, the following provisions shall have effect:

(1.) A notice may be served on any such man either by being sent by post to his last registered place of abode, or by being served in the prescribed manner;

(2.) Evidence of the delivery at the last registered place of abode of a man belonging to the army or militia reserve of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man;

(3.) The publication of a notice in the prescribed manner in the parish in which the last registered place of abode of a man belonging to the army or militia reserve is situate shall be sufficient notice to such man, notwithstanding that a copy of such notice is not served on him;

(4.) Every constable, overseer of the poor, and inspector of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

25. (1.) Any offence which under this Act is punishable on conviction by court-martial shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Any offence which under this Act is punishable on conviction by a court of summary jurisdiction may be prosecuted, and any fine recoverable on such conviction may be

recovered, in manner provided by sections one hundred and sixty-six, one hundred and sixty-seven, and one hundred and sixty-eight of the Army Act 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to this Act.

(3.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by this Act for the amount of any fine or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything contained in any other Act, not be reduced by way of mitigation or otherwise.

(4.) For all purposes in relation to the arrest, trial, and punishment of a person for any offence punishable under this Act, including the summary dealing with the case by the commanding officer, this Act shall apply to the Channel Islands and the Isle of Man.

26. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect:—

- (1.) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act.
- (2.) Proceedings against an alleged offender, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted whether the term of his reserve service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to an officer who under the orders or regulations in force under this Act has power to direct the offender to be tried by a court-martial or by a court of summary jurisdiction, if the offender is apprehended at that time, or if he is not apprehended at that time, then within two months after the time at which he is apprehended, whether such apprehension is by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceedings so instituted.
- (3.) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

27. (1.) Section one hundred and sixty-four of the Army Act 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a man belonging to the army or militia reserve who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2.) Section one hundred and sixty-three of the Army Act 1881 (relating to evidence) shall apply to all proceedings under this Act.

28. In this Act, unless the context otherwise requires—

The expression "man" includes a warrant officer not holding an honorary commission, and a non-commissioned officer.

The expression "out-pensioners of Chelsea Hospital" includes all persons whose claims for prospective or deferred pension have been registered in virtue of any warrant of Her Majesty.

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Other expressions have the same meaning as they have in the Army Act 1881.

In the Army Act 1881 the expressions "army reserve force" and "militia reserve force" shall respectively mean the army reserve and militia reserve under this Act.

29. The Acts mentioned in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned:

Provided as follows—

(1.) Such repeal shall not revive any enactment, and shall not, save as herein otherwise provided, affect anything previously done or suffered, or any existing right or title, or any remedy in respect thereof, or the proof of any past act.

(2.) All orders, warrants, regulations, and directions in relation to the army reserve force or to the militia reserve force which exist at the commencement of this Act shall, so far as consistent with the tenor thereof, be of the same effect as if they were orders or regulations under this Act, and may be revoked or altered accordingly.

(3.) Any man who at the commencement of this Act belongs to the first or second class of the army reserve force, or to the militia reserve force, shall continue to belong to the first or second class of the army reserve or to the militia reserve under this Act, as the case may be, in like manner as if he had entered the same in pursuance of this Act.

(4.) Where a man belonging to either the army reserve force or the militia reserve force

entered such force before the passing of the Regulation of the Forces Act 1881, or before the date of any regulation made under the said Act, nothing in the said Act or regulation or in this Act shall require such man without his consent to serve in or be appointed, transferred, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached, if the Regulation of the Forces Act 1881, or this Act, or the said regulation, as the case may be, had not been passed or made, or to serve for any longer period than that for which he was before the passing of the Regulation of the Forces Act 1881, or before the date of such regulation, as the case may be, liable to serve.

(5.) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may

be carried on and completed, and the offender may be tried and punished, as if this Act had not passed; but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act (including the dealing with the case by the commanding officer), so however that a person shall not be subject for any such offence to any greater punishment than that to which he was subject before the commencement of this Act, nor to any punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

Where a proclamation has been issued, or any man belonging to the army or militia reserve has been called out before the commencement of this Act, this Act shall apply as if such proclamation had been issued, and men called out in pursuance of this Act.

SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of an Act in this Schedule is inclusive of the word, section, or other part first and last mentioned or otherwise referred to as forming the beginning, or as forming the end, of the portion described in the description or citation.

30 & 31 Vict. c. 110.	-	The Reserve Force Act, 1867	-	The whole Act.
30 & 31 Vict. c. 111.	-	The Militia Reserve Act, 1867	-	The whole Act.
33 & 34 Vict. c. 67.	-	The Army Enlistment Act, 1870	-	Sections fourteen and fifteen, and section twenty, except so far as it relates to the militia, yeomanry, or volunteers.
34 & 35 Vict. c. 86.	-	The Regulation of the Forces Act, 1871.	-	So much of sections seven and nineteen as relates to the army reserve or the militia reserve.
36 & 37 Vict. c. 68.	-	An Act for extending the Period of Service in the Militia; and for other purposes.	-	Section six.
41 & 42 Vict. c. 10.	-	An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters.	-	Sections forty-two, forty-seven, forty-eight, and one hundred nine.
42 & 43 Vict. c. 32.	-	The Army Discipline and Regulation (Commencement) Act, 1879.	-	Section five, from "Any reference in the Reserve Force" to the end of the section, and so much of the rest of the section as relates to the reserve forces or keeps in force any portion of the Army Mutiny Act relating to the reserve forces.

42 & 43 Vict. c. 33.	-	The Army Discipline and Regulation Act, 1879.	So much as is unrepealed.
44 & 45 Vict. c. 57.	-	The Regulation of the Forces Act, 1881.	Sections ten to thirteen and forty-five, and so much of section fifty-three as relates to the reserve forces.
44 & 45 Vict. c. 58.	-	The Army Act, 1881	- - Section one hundred and sixty-three, from "evidence of the delivery" to "knowledge of such man" (being paragraph (f.) of sub-section one); section one hundred and ninety, from "the expression the army re-serve force" to "Militia Reserve Act, 1867, and any Act amending the same"; and section one hundred and ninety-three from "so much of the "Army Discipline and Regulation Act, 1879," to the end of the section.

CHAP. 49.

Militia Act, 1882.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title.*
2. *Commencement of Act.*

PART I.

MAINTENANCE AND GOVERNMENT.

3. *Raising and number of Militia.*
4. *Organisation of Militia.*
5. *Vesting in Her Majesty of jurisdiction under certain Acts in relation to the Militia.*
6. *First appointments to lowest rank of militia officer.*

PART II.

VOLUNTARY ENLISTMENT.

7. *Raising of men by voluntary enlistment.*
8. *Enlistment, term of service, and re-engagement.*
9. *Application to militia recruits of certain enlistment sections of 44 & 45 Vict. c. 58.*
10. *Enlistment of men discharged with disgrace from army or navy, or contrary to rules.*
11. *Enlistment of militiamen in regular forces.*

PART III.

GENERAL PROVISIONS.

Service and Oath.

- 12. *Area of service of Militia.*
- 13. *Oath of allegiance of militiaman.*

Training.

- 14. *Preliminary training of Militia recruits.*
- 15. *Calling up for instruction.*
- 16. *Annual training.*
- 17. *Extension, reduction, or suspension of annual training.*

Embodiment.

- 18. *Embodiment of Militia.*
- 19. *Assembly of Parliament when Militia is ordered to be embodied.*
- 20. *Disembodiment of Militia.*

Provisions common to Annual Training and Embodiment.

- 21. *Notice of times and places of attendance for annual training or embodiment.*
- 22. *General provision as to notices.*

Desertion and Fraudulent Enlistment.

- 23. *Punishment for non-attendance for preliminary or annual training or embodiment, and for desertion or absence without leave.*
- 24. *Supplemental provision as to deserters and absentees.*
- 25. *Punishment for inducing militiaman to desert or absent himself.*
- 26. *Fraudulent enlistment or false answer of militiaman.*
- 27. *Liability of deserter, absentee, or fraudulent enlistee to further service.*
- 28. *Record of illegal absence of militiaman.*

Lieutenants and Deputy Lieutenants of Counties.

- 29. *Appointment of lieutenants of counties.*
- 30. *Appointment, approval, and removal of deputy lieutenants.*
- 31. *Provision for absence or disability of lieutenant.*
- 32. *Appointment of vice-lieutenant.*
- 33. *Qualifications of deputy lieutenants.*
- 34. *Delivery, enrolment, and return of qualifications, and gazetting of commissions.*
- 35. *Penalty for acting as deputy lieutenant without being qualified, &c.*
- 36. *Powers, &c. of lieutenants and deputy lieutenants.*

Quotas.

- 37. *Quotas of Militia.*

Civil Rights and Exemptions.

- 38. *Militia commissions not to vacate seats in Parliament.*
- 39. *Attendance of voters at Parliamentary elections.*
- 40. *Performance of duties of sheriff, if a militia officer, during embodiment.*
- 41. *Exemption of militiamen.*

Legal Proceedings.

- 42. *Trial of offences and recovery and application of fines under Militia Acts.*
- 43. *Provision as to offences triable both by court-martial and by court of summary jurisdiction.*
- 44. *Evidence.*

Miscellaneous.

- 45. *Militia returns, how to be made.*
- 46. *Protection of persons acting under Militia Acts.*
- 47. *Exercise of powers vested in holder of military office.*

*Provisions as to special Localities.*48. *Provisions as to counties for purposes of Militia Acts.*49. *Application of Militia Acts to certain places:**Isle of Wight.**Tower Hamlets.**Cinque Ports.**Haverfordwest.**Miners of Cornwall and Devon.*50. *Application of Act to city of London.**Definitions.*51. *Definitions.**Application of Act to Scotland.*52. *Modifications in application of Act to Scotland.**Application of Act to Ireland.*53. *Modification in application of Act to Ireland.**Repeal.*54. *Repeal of Acts.**SCHEDULES.***An Act to consolidate the Acts relating to the Militia. (18th August 1882.)**

WHEREAS it is expedient to re-enact the Militia (Voluntary Enlistment) Act, 1875, (which consolidated divers enactments applicable to the Militia of the United Kingdom,) with such modifications as are rendered necessary by the passing of the Regulation of the Forces Act 1881 and the Army Act 1881, and are otherwise expedient:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

1. This Act may be cited as the Militia Act, 1882.

2. This Act shall come into operation on the first day of January one thousand eight hundred and eighty-three (which day is in this Act referred to as the commencement of this Act).

PART I.**MAINTENANCE AND GOVERNMENT.**

3. It shall be lawful for Her Majesty to raise and keep up a Militia, consisting of such

number of men as may from time to time be provided by Parliament.

4. (1.) Subject to the provisions of the Militia Acts, it shall be lawful for Her Majesty, by order signified under the hand of a Secretary of State, from time to time to make, and when made revoke and vary, orders with respect to the government, discipline, and pay of the Militia, and with respect to all other matters and things relating to the Militia, including any matter by this Act authorized to be prescribed, or expressed to be subject to orders or regulations.

(2.) The said orders may provide for the formation of militiamen into regiments, battalions, or military bodies, and for the formation of such regiments, battalions, or military bodies into corps, either alone or jointly with any other part of Her Majesty's forces, and for appointing, transferring, or attaching militiamen to corps, and for posting, attaching, or otherwise dealing with militiamen within the corps, and may regulate the appointment, rank, duties, and numbers of the militia officers and non-commissioned officers.

(3.) Subject to the provisions of any such order, a Secretary of State may from time to time make and when made revoke and vary, general or special regulations with respect to any matter with respect to which Her Majesty may make orders under this section.

(4.) Provided that the said orders or regulations shall not—

- (a.) affect or extend the term for which or the area within which a militiaman is liable under the Militia Acts to serve; or
 - (b.) authorize a militiaman when belonging to one corps to be transferred without his consent to another corps; or
 - (c.) where the corps of a militiaman includes any battalion or other body of the regular forces, authorize him to be posted without his consent to that battalion or body.
- (5.) Where a militiaman was enlisted or re-engaged before the date of any order or regulation under this Act, nothing in such order or regulation shall render him liable without his consent to be appointed, transferred, or attached to any military body to which he could not without his consent have been appointed, transferred, or attached if the said order or regulation had not been made.
- (6.) All orders and general regulations made under this Act shall be laid before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, or if Parliament be not sitting, then as soon as practicable after the beginning of the then next session of Parliament.

5. All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the Militia, or any part thereof, which under any Acts, other than this Act, are vested in or exercisable by the lieutenants of counties, or by the Lord Lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall be exercisable by Her Majesty, through a Secretary of State or any officers to whom Her Majesty may, by the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving, nevertheless, to the lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the Militia by ballot, and the proceedings incidental thereto.

6. First appointments to the lowest rank of militia officer in any corps shall be given to persons recommended by the lieutenant of the county, if a person approved by Her Majesty is recommended by such lieutenant for any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant in the prescribed manner, provided the person or persons fulfil all the prescribed conditions as to age, physical fitness, and educational qualifications; and where a corps comprises militiamen of two or more counties, the recommendations for such first appointments shall be made by the lieu-

tenants of the respective counties in such rotation or otherwise as may be from time to time prescribed.

PART II.

VOLUNTARY ENLISTMENT.

7. Subject to the provisions of this Act, private militiamen may be raised by voluntary enlistment by such persons and in such manner and subject to such regulations as may be prescribed, and this part of this Act shall apply only to persons who have voluntarily enlisted.

8. (1.) Every militiaman enlisted under this Act shall be enlisted as a militiaman for some county, and shall forthwith be appointed to serve in a corps for that county, or for some area comprising the whole or part of that county.

(2.) Every militiaman enlisted under this Act shall be enlisted to serve for such period not exceeding six years as may be prescribed, and such period shall be reckoned from the date of his attestation.

(3.) Every militiaman enlisted under this Act may from time to time within twelve months of the end of his current term of service be re-engaged for such period, not exceeding six years from the end of that current term, as may be prescribed.

(4.) A militiaman on re-engagement shall make the prescribed declaration before a justice of the peace or an officer.

(5.) Militiamen enlisted or re-engaged under this Act shall for the purposes of any enactment referring to persons enrolled in the Militia be deemed to be enrolled.

9. (1.) The following sections of the Army Act 1881 shall apply to militia recruits; that is to say,

Section eighty (relating to the mode of enlistment and attestation);

Section ninety-six (relating to the claims of masters to apprentices);

Section ninety-eight (imposing a fine for unlawful recruiting);

Section ninety-nine (making recruits punishable for false answers);

Section one hundred (relating to the validity of attestation and enlistment, or re-engagement);

Section one hundred and one (relating to the competent military authority); and

So much of section one hundred and sixty-three as relates to an attestation paper, or a copy thereof, or a declaration, being evidence;

And the said sections shall apply in like manner as if they were herein re-enacted, with the substitution,—

- (a.) of "Militia" for "regular forces," and of "militiaman" for "soldier"; and
 - (b.) (in section one hundred) of "during three months, or during the whole period of preliminary training if less than three months, or during one whole period of annual training" for "during three months."
- (2.) A recruit may be attested by any lieutenant or deputy lieutenant of any county in the United Kingdom, or by a regular officer, or by a militia officer, and the sections of the Army Act 1881 in this section mentioned, and also section thirty-three of the same Act, shall, as applied to the Militia, be construed as if a justice of the peace in those sections included such lieutenant, deputy lieutenant, or officer.
- (3.) A man enlisted in the Militia, until duly discharged in the prescribed manner, shall remain subject to this Act as a militiaman.

10. (1.) If a person—
- (a.) Having been discharged with disgrace from any part of Her Majesty's forces, or having been dismissed with disgrace from the Navy, has afterwards enlisted in the Militia without declaring the circumstances of his discharge or dismissal; or
 - (b.) Is concerned when subject to military law in the enlistment for service in the Militia of any man, when he knows or has reasonable cause to believe such man to be so circumstanced that by enlisting he commits an offence against the Army Act 1881 or this Act; or
 - (c.) Wilfully contravenes when subject to military law any enactments, orders, or regulations which relate to the enlistment or attestation of militiamen,
- such person shall be guilty of an offence.

(2.) A person guilty of an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

- (a.) be liable to be tried by court-martial, and on conviction to suffer such punishment as is imposed for the like offence by section thirty-two or thirty-four of the Army Act 1881, as the case may be; or
- (b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than two and not more than six months; and may in any case be taken into military custody.

(3.) For the purpose of this section the expression "discharged with disgrace" means

discharged with ignominy, discharged as incorrigible and worthless, or discharged on account of a conviction for felony or a sentence of penal servitude.

11. Militiamen may, if it is so prescribed, and subject to the prescribed conditions (if any), enlist in the regular forces; and a militiaman so enlisting in the regular forces shall be deemed to be discharged from the Militia.

PART III.

GENERAL PROVISIONS.

Service and Oath.

12. (1.) Any part of the Militia shall be liable to serve in any part of the United Kingdom, but no part of the Militia shall be carried or ordered to go out of the United Kingdom.

(2.) Provided that if any part of the Militia make a voluntary offer certified by their commanding officer to extend their services to the Islands of Guernsey, Jersey, Alderney, and Sark, the Isle of Man, Malta, and the garrison of Gibraltar, or any of them, it shall be lawful for Her Majesty, if she thinks fit, to accept such offer and to employ the said part of the Militia accordingly; and where such offers are made by several parts of the Militia it shall be lawful for Her Majesty, as may seem fit, to accept some and refuse others of such offers.

(3.) It shall be lawful for Her Majesty to direct the commanding officer of any part of the Militia to propose to that part to make an offer to extend the area of their services as aforesaid under such regulations as Her Majesty may be pleased to appoint.

(4.) A person shall not be compelled to make an offer to serve as aforesaid, or be engaged so to serve, except by his own consent; and a commanding officer shall not certify any voluntary offer previously to his having explained to every person offering so to serve that the offer is to be purely voluntary on his part.

13. Every militiaman raised under this Act or under any other of the Militia Acts shall take the following oath; that is to say,

'I A.B. do solemnly promise and swear, that I will be faithful to [here insert name of sovereign for time being], her [or his] heirs and successors, and that I will faithfully serve in the Militia until I shall be discharged.'

And such oath may be administered by any lieutenant or deputy lieutenant of a county,

or by any justice of the peace, or by any regular officer or militia officer, and in the case of a militiaman enlisted under this Act shall be specified in the attestation paper.

Training.

14. (1.) Every militiaman shall attend for preliminary training at such place or places within the United Kingdom, at such time or times, and for such period or periods, not exceeding in the whole six months, as may be prescribed, and may be trained by such officers, non-commissioned officers, and men of the regular forces or of the militia as may be prescribed.

(2.) The time of such preliminary training shall not be included in the time during which such man is liable to be called out for annual training.

15. Any orders or regulations under this Act may provide for any militia officer or militiaman, with his own consent, being called up for the purpose of instruction.

16. Save as otherwise provided by this Act, the Militia shall be annually trained for not less than twenty-one nor more than twenty-eight days in every year, at such times and at such places in any part of the United Kingdom as may be prescribed;

and for that purpose may be called out once or oftener in every year.

17. Her Majesty in Council may from time to time,—

- (a.) order that the period of annual training in any year of all or any part of the Militia be extended, but so that the whole period of annual training be not more than fifty-six days in any year; or
 - (b.) order that the period of annual training in any year of all or any part of the Militia be reduced to such time as to Her Majesty may seem fit; or
 - (c.) order that in any year the annual training of all or any part of the Militia be dispensed with;
- and every such order shall have full effect.

Embodiment.

18. (1.) In case of imminent national danger or of great emergency it shall be lawful for Her Majesty in Council by proclamation (the occasion being first communicated to Parliament, if Parliament be then sitting, or declared in Council, and notified by the proclamation, if Parliament be not sitting) to order the Militia to be embodied.

(2.) It shall be lawful for Her Majesty by any such proclamation to order a Secretary of State from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Militia.

(3.) Every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted in this Act, and where such directions for the time being direct the embodiment of any part of the Militia, every officer and man belonging to that part shall attend at the place and time fixed by those directions, and at and after that time shall be deemed to be embodied; and such officers and men are in this Act referred to as embodied, or as the embodied part or parts of the Militia.

19. Whenever Her Majesty orders the Militia to be embodied, if Parliament be then separated by such adjournment or prorogation as will not expire within ten days, a proclamation shall be issued for the meeting of Parliament within ten days, and Parliament shall accordingly meet and sit upon the day appointed by such proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

20. (1.) It shall be lawful for Her Majesty by proclamation to order that the Militia shall be disembodied, and thereupon a Secretary of State shall give such directions as may seem necessary or proper for carrying the said proclamation into effect.

(2.) Until any such proclamation of Her Majesty has been issued a Secretary of State may from time to time, as he may think expedient for the public service, give such directions as may seem necessary or proper for disembodiment of any embodied part of the Militia, and for embodying any part of the Militia not embodied, whether previously disembodied or otherwise.

(3.) After the date fixed by the directions for the disembodiment of any part of the Militia, the officers and men belonging to that part shall be in the position of militia officers and men not embodied.

Provisions common to Annual Training and Embodiment.

21. (1.) Where directions have been given for calling out for annual training or embodying any part of the Militia, the commanding officer shall cause a notice to attend at the time and place fixed to be served on each militiaman required to attend.

(2.) Such notice shall also be published in the prescribed manner in every parish in the

county or area to which the corps of any such militiaman belongs.

(3.) The notices to be served and published under this section shall be served and published within such reasonable time before the time fixed for the attendance of the persons required to attend as may be prescribed.

22. With respect to notices required in pursuance of this Act or of the orders and regulations in force under this Act to be given to militiamen, the following provisions shall have effect:

(1.) Any such notice may be served on a militiaman either by being sent by post to his usual place of abode, or by being served in the prescribed manner;

(2.) For the purpose of the service of any such notice the usual place of abode of a militiaman shall be that stated on his attestation or enrolment, or that subsequently notified by him in the prescribed manner;

(3.) Evidence of the delivery at the usual place of abode of a militiaman of a notice, or of a letter addressed to such man and containing a notice, shall be evidence that such notice was brought to the knowledge of such man;

(4.) The publication of any such notice in the prescribed manner in every parish in the county or area to which a corps belongs shall be sufficient notice to every militiaman in that corps to whom the notice applies, notwithstanding that a copy of such notice is not served upon him;

(5.) Every constable and overseer of the poor shall, when so required by or on behalf of a Secretary of State, conform with the orders and regulations for the time being in force under this Act with respect to the publication and service of notices, and in default shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

Desertion and Fraudulent Enlistment.

23. (1.) Any militiaman who commits any of the following offences, that is to say,—

Without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in accordance with the orders and regulations under this Act, fails to appear at the time and place appointed, either for preliminary training, or for annual training, or for assembling on embodiment, shall—

(a.) in the case of embodiment, be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act 1881; and

(b.) in any other case, be guilty of absenting himself without leave within the meaning of section fifteen of the Army Act 1881.

(2.) A militiaman who commits an offence under this section, or under section twelve or section fifteen of the Army Act 1881, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

(a.) be liable to be tried by court-martial, and convicted and punished accordingly; or

(b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to a fine of not less than forty shillings and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than seven days and not more than the maximum term allowed by law for nonpayment of the fine;

and may in any case be taken into military custody.

24. (1.) Section one hundred and fifty-four of the Army Act 1881 shall apply to a militiaman who is a deserter or absentee without leave within the meaning of this Act in like manner as it applies to a deserter in that section mentioned, and a man who under that section is delivered into military custody or committed for the purpose of being so delivered may be tried as provided by this Act.

(2.) Any person who falsely represents himself to any military, naval, or civil authority to be a deserter or absentee without leave from the Militia shall be liable, on conviction by a court of summary jurisdiction, to imprisonment, with or without hard labour, for a term not exceeding three months.

25. (1.) Any person who by any means whatsoever—

(a.) Procures or persuades any militiaman to commit an offence of absence without leave within the meaning of this Act, or attempts to procure or persuade any militiaman to commit such offence; or

(b.) Knowing that a militiaman is about to commit the offence of absence without leave within the meaning of this Act, aid or assists him in so doing; or

(c.) Knowing any militiaman to be an absentee without leave within the meaning of this Act, conceals such militiaman, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue;

shall be liable, on conviction by a court of summary jurisdiction, to a fine not exceeding twenty pounds.

(2.) Section one hundred and fifty-three of the Army Act 1881 shall apply as if a militiaman

man were a soldier, and as if the word "desert" and other words referring to desertion included desertion within the meaning of this Act as well as desertion within the meaning of the Army Act 1881; and any person who, knowing any militiaman to be a deserter within the meaning of this Act or of the Army Act 1881, employs or continues to employ such militiaman, shall be deemed to aid him in concealing himself within the meaning of the said section.

26. If any person commits any of the following offences; that is to say,

- (a.) When belonging to the Militia, without having fulfilled the conditions enabling him to enlist, enrol, or enter, enlists or enrolls in any of the auxiliary or reserve forces, or enters the Royal Navy; or
- (b.) When belonging to the reserve forces, or to any of the auxiliary forces other than the Militia, or to the Royal Navy, without having fulfilled the conditions enabling him to enlist or enrol, enlists or enrolls in the Militia;

such person, if on service as part of the regular forces at the time when he commits the offence, shall be guilty of fraudulent enlistment, and in any other case shall be guilty of making a false answer; and for the purposes of this section a person shall be deemed to be on service as part of the regular forces if being a militiaman he is embodied, or if when belonging to the reserve forces he is called out on permanent service, or if when belonging to the yeomanry or volunteers he is on actual military service.

(2.) A person who commits an offence under this section, whether otherwise subject to military law or not, shall be liable as follows; that is to say,

- (a.) be liable to be tried by court-martial, and on conviction to suffer such punishment as is imposed, if the offence is fraudulent enlistment, by section thirteen, and if it is a false answer, by section thirty-three of the Army Act 1881; or
- (b.) be liable to be convicted by a court of summary jurisdiction, and to be sentenced to imprisonment, with or without hard labour, for any term not less than one month and not more than three months, or to a fine of not less than five pounds and not more than twenty-five pounds, and in default of payment to imprisonment, with or without hard labour, for any term not less than one month and not more than the maximum term allowed by law for nonpayment of the fine, and in the case of a second or any subsequent conviction to be sentenced to imprisonment,

with or without hard labour, for any term not less than two and not more than six months;

and may in any case be taken into military custody.

(3.) A person who attempts to commit an offence under this section shall, whether otherwise subject to military law or not, be liable to be taken into military custody, tried, convicted, and punished in like manner in all respects as if he had committed an offence under this section, with this qualification, that if he is convicted by court-martial he shall not be liable to any punishment exceeding imprisonment, and if he is convicted by a court of summary jurisdiction this section shall apply as if the terms of imprisonment or amounts of fine were reduced by one half.

27. Any militiaman who is delivered into military custody or committed as a deserter or absentee without leave by a court of summary jurisdiction, or is convicted by court-martial or by a court of summary jurisdiction of desertion or absence without leave or fraudulent enlistment under the Army Act 1881 or this Act, or is dealt with summarily by his commanding officer for any such offence, shall, whether he is or is not punished for his offence, be liable to serve as follows; (that is to say,)

- (a.) If he has not completed the period of his preliminary training, he shall be liable to attend for preliminary training for the whole of the prescribed period or periods, or for the prescribed portion thereof, without any deduction being made for any time he has previously attended for such training; and
- (b.) If the duration of his absence from annual training has amounted in any year to the whole of the time of annual training, or to any part of that time not less than fourteen days, he shall be liable to serve after the expiration of the term of his militia service for an additional year for each year in which he has been so absent; and
- (c.) If he was embodied either at the time when he committed the offence or afterwards, he shall be liable to serve for an additional period equal to the time which elapsed between the time of his committing the offence and the time of his apprehension or voluntary surrender; and the period of such additional service shall commence at the expiration of the term of his militia service, or at the time of his apprehension or surrender, whichever last happens.

28. (1.) Where a militiaman is subject to military law, and is illegally absent from his

duty, a court of inquiry under section seventy-two of the Army Act 1881 may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which such man was subject to military law is less than twenty-one days, or has expired before the expiration of twenty-one days.

(2.) Where a militiaman fails to appear at the time and place appointed for preliminary training or for annual training or for assembling on embodiment, and his absence continues for not less than fourteen days, his commanding officer shall make an entry in the regimental books of such absence, and such entry shall be conclusive evidence of the fact of such absence.

Lieutenants and Deputy Lieutenants of Counties.

29. Her Majesty shall from time to time appoint lieutenants for the several counties in the United Kingdom.

30. (1.) The lieutenant of every county shall from time to time appoint such persons as he thinks fit, living within the county, and qualified as provided by this Act, to be his deputy lieutenants.

(2.) In every county twenty persons at least, or if so many persons cannot be found duly qualified, then all the duly qualified persons living within the county, shall, subject as herein-after mentioned, be appointed deputy lieutenants.

(3.) The lieutenant shall certify to Her Majesty the name of every person whom he proposes to appoint deputy lieutenant, and shall not grant a commission as deputy lieutenant to any person until informed by a Secretary of State that Her Majesty does not disapprove of the granting of such commission.

(4.) Whenever Her Majesty may think fit to signify her pleasure to the lieutenant of any county that all or any of the deputy lieutenants thereof be displaced, such lieutenant shall forthwith displace them, and appoint others in their stead, subject to the provisions of this Act; and a return of all persons by name who have been appointed deputy lieutenants or have been displaced shall be annually laid before Parliament, made up to the thirty-first day of December, within ten days after Parliament meets.

(5.) The commission of a deputy lieutenant shall not be vacated by the lieutenant who granted it ceasing to be lieutenant.

31. Where the lieutenant of a county is absent from the United Kingdom, or by reason of sickness or otherwise is unable to act, or where there is no lieutenant of a county, Her

Majesty may authorize any three deputy lieutenants of such county to act as the lieutenant thereof, and such deputy lieutenants while so authorized may do all acts which might lawfully be done by the lieutenant, and shall for all purposes stand in the place of the lieutenant.

32. The lieutenant of a county, with the approbation of Her Majesty, may appoint any deputy lieutenant of the county to act for him as vice-lieutenant during his absence from the county, sickness, or other inability to act; and every such vice-lieutenant, until the appointment is revoked or he is removed by Her Majesty, may from time to time, whenever such absence, sickness, or inability occurs, do all acts which might lawfully be done by the lieutenant, and shall for all purposes stand in the place of the lieutenant, without prejudice to the authority of Her Majesty to make other provision for this purpose under the foregoing enactment.

33. Every person appointed a deputy lieutenant shall be qualified as follows; that is to say,

- (a.) He shall be a peer of the realm or the heir apparent of such a peer, and have a place of residence within the county for which he is appointed; or
- (b.) He shall be in possession for his own benefit of an estate for the life of himself or another, or of some greater estate, in land in the United Kingdom of the yearly value of not less than two hundred pounds; or
- (c.) He shall be the heir apparent of some person who is in possession for his own benefit of such an estate as above mentioned; or
- (d.) He shall be possessed or entitled, at law or in equity, in possession for his own benefit, for the life of himself or another, or for some greater interest, of or to a clear yearly income arising from personal estate within the United Kingdom of not less amount than the yearly value of an estate in land above mentioned; and the clear yearly income arising from any such personal estate shall be admitted in whole or in part of a qualification arising from the possession of an estate in land.

34. (1.) A person appointed a deputy lieutenant of a county, who is not qualified as a peer or heir apparent of a peer of the realm, shall before acting as deputy lieutenant deliver to the clerk of general meetings of lieutenancy of that county a specific description in writing, signed by himself, of his qualification, stating

where the same consists wholly or partly of an estate in land or of heirship to an estate in land, the county and parish in which the land is situate.

(2.) The clerk of general meetings of lieutenancy shall send to the lieutenant of the county a copy of every such description delivered to him, and shall enter every such description on a roll to be kept for that purpose; and shall (at the cost of the county rate) cause to be published in the London Gazette the names of the persons appointed deputy lieutenants, with the dates of their commissions, in like manner as commissions of officers of Her Majesty's land forces are published.

(3.) The clerk of general meetings of lieutenancy shall from time to time, when so required, send to a Secretary of State a complete account of the several descriptions of qualification delivered to him during the period mentioned in the requisition, and the Secretary of State shall cause copies of every such account to be laid before both Houses of Parliament.

35. (1.) If any person acts as deputy lieutenant without being duly qualified, or without having delivered the description of his qualification as required by this Act, he shall forfeit the sum of two hundred pounds; but where such person has been appointed a deputy lieutenant all acts done by him in the execution of his office shall be as valid as if he had been duly qualified and had duly delivered such description.

(2.) In any legal proceeding for the recovery of any such penal sum the proof of qualification shall lie on the defendant.

36. Except as otherwise provided by this or any other Act, the lieutenant and deputy lieutenants appointed under this Act for any county shall respectively have such jurisdiction, duties, powers, and privileges as are vested in the lieutenant and deputy lieutenants respectively for such county under any Act of Parliament for the time being in force.

Quotas.

37. (1.) It shall be lawful for Her Majesty in Council from time to time to appoint the quotas of militiamen to serve for the several counties of the United Kingdom.

(2.) Notice of the quota from time to time appointed for any county shall be transmitted to the lieutenant of that county and published in the London Gazette.

(3.) Such quota shall be the quota of the county until another quota is appointed and notified in like manner.

Civil Rights and Exemptions.

38. The acceptance of a commission as a militia officer shall not vacate the seat of any member returned to serve in Parliament.

39. A person in the Militia shall not be liable to any penalty or punishment for or on account of his absence during the time he is voting at any election of a member to serve in Parliament, or during the time he is going to or returning from such voting.

40. If a sheriff is a militia officer, then during embodiment he shall be discharged from personally performing the office of sheriff, and the under sheriff shall be answerable for the execution of the said office, in the name of the high sheriff; and the security given by the under sheriff, and his pledges to the high sheriff, shall stand a security to the Queen, her heirs and successors, and to all persons whomsoever, for the due performance of the office of sheriff during such time.

41. A person in the Militia shall not be compelled to serve as a peace officer or parish officer.

Legal Proceedings.

42. (1.) Any offence which under the Militia Acts is punishable on conviction by court-martial shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, be deemed to be an offence under the Army Act 1881, with this modification, that any reference in that Act to forfeitures and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(2.) Every fine or pecuniary forfeiture imposed under any of the Militia Acts, if exceeding the sum of twenty-five pounds, may be recovered by action in Her Majesty's High Court of Justice in England or Ireland, or in the Court of Session in Scotland; and if not exceeding such amount may, so far as the recovery thereof is not otherwise provided for, be recovered on conviction by a court of summary jurisdiction, in like manner as if it were a fine under this Act.

(3.) Any offence which under the Militia Acts is punishable on conviction by or before a court of summary jurisdiction within the meaning of this Act may be prosecuted, and any fine or pecuniary forfeiture which under the Militia Acts is recoverable for any such offence, or is otherwise recoverable before a court of summary jurisdiction, may be recovered, in manner provided by sections one

hundred and sixty-six and one hundred and sixty-seven of the Army Act 1881, in like manner as if those sections were herein re-enacted and in terms made applicable to the Militia Acts, subject to the following modification, namely,

every fine or pecuniary forfeiture imposed under any of the Militia Acts on a militiaman, or recovered on a prosecution instituted under any of the Militia Acts by or on behalf of the commanding officer of a militiaman, (the application of which is not otherwise provided for by the said Acts) shall, notwithstanding anything in any Act or charter or in the said sections to the contrary, be paid to the commanding officer of the part of the Militia to which the militiaman belongs, and shall be accounted for by him in the prescribed manner.

(4.) Save as provided by the said section one hundred and sixty-six, the minimum fixed by any of the Militia Acts for the amount of any fine or forfeiture or for the term of any imprisonment shall be duly observed by courts of summary jurisdiction, and shall, notwithstanding anything in any other Act contained, not be reduced by way of mitigation or otherwise.

43. With respect to the trial and punishment of men charged with offences which in pursuance of this Act are cognizable both by a court-martial and by a court of summary jurisdiction, the following provisions shall have effect:

(1.) An alleged offender shall not be liable to be tried both by court-martial and by a court of summary jurisdiction, but may be tried by either of such courts, according as may be prescribed by orders or regulations under this Act.

(2.) Proceedings against an alleged offender when a militiaman, before either a court-martial or his commanding officer or a court of summary jurisdiction, may be instituted, whether the term of his militia service has or has not expired, and may, notwithstanding anything in any other Act, be instituted at any time within two months after the time at which the offence becomes known to the commanding officer of the militiaman, if the militiaman is then apprehended, or if he is not then apprehended, then within two months after the time at which he is apprehended, whether such apprehension was by a civil or military authority, and any limitation contained in any other Act with respect to the time for hearing and determining an offence shall not apply in the case of any proceeding so instituted.

(3.) Where an offender has on several occasions been guilty of desertion, fraudulent enlistment, or making a false answer, he may,

for the purposes of any proceedings against him, be deemed to belong to any one or more of the corps to which he has been appointed or transferred, as well as the corps to which he properly belongs; and it shall be lawful to charge the offender with any number of the above-mentioned offences at the same time, whether they are offences within the meaning of the Army Act 1881 or offences within the meaning of this Act, and to give evidence of such offences against him, and if he be convicted of more than one offence to punish him accordingly, as if he had been previously convicted of any such offence.

(4.) For the purposes of this section the expression "tried by court-martial" shall include "dealt with summarily by his commanding officer."

44. (1.) Section one hundred and sixty-four of the Army Act 1881 (which relates to evidence of the civil conviction or acquittal of a person subject to military law) shall apply to a militiaman who is tried by a civil court, whether he is or is not at the time of such trial subject to military law.

(2.) Section one hundred and sixty-three of the Army Act 1881 (relating to evidence) shall apply to all proceedings under the Militia Acts.

Miscellaneous.

45. All returns required or authorized to be made in relation to the Militia by any of the Militia Acts shall be made to such persons as may be prescribed.

46. (1.) The law relating to the protection of justices of the peace in the execution of their office shall, save as regards limitation of actions, notice of action, venue, tender of amends and payment into court, and other matters relating to actions which are provided for by this section, apply to lieutenants and deputy lieutenants when acting in the execution of the Militia Acts, as if they were included in the expression "justices of the peace."

(2.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of the Militia Acts, or in respect of any alleged neglect or default in the execution of those Acts, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within twelve months next after the ceasing thereof.

(3.) In any such action tender of amends

before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(4.) Every such action, and also every action against a member or minister of a court-martial in respect of a sentence of such court, or of anything done by virtue or in pursuance of such sentence, shall be brought in one of Her Majesty's superior courts in the United Kingdom.

47. (1.) Any power or jurisdiction given to, and act or thing to be done by, to, or before any person holding any military office may in relation to the Militia be exercised by or done by, to, or before any other person for the time being authorized in that behalf according to the custom of the service.

(2.) Where by any of the Militia Acts, or by any order or regulation in force under this Act, any order is authorized to be made by any military authority, such order may be signified by an order, instruction, or letter under the hand of any officer authorized to issue orders on behalf of such military authority, and an order, instruction, or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

Provisions as to special Localities.

48. For the purposes of the Militia Acts the following provisions shall have effect with respect to counties :—

(1.) The expression "county" shall, unless the context otherwise requires, mean a county at large, with the exception that each riding of the county of York shall be a separate county.

(2.) Each county of a city, county of a town, or place mentioned in the first column of the first schedule to this Act shall be deemed to form part of the county set opposite thereto in the second column of that schedule, and where a parish is mentioned in that second column to form part of that parish.

(3.) All other places locally situate within a county as above defined shall be deemed to form part of that county.

(4.) Every place declared by this section to form part of a county shall (save as otherwise expressly provided) be subject to the jurisdiction and authority of the lieutenant, deputy lieutenants, and other officers of the said county.

49. The Militia Acts shall apply to the following places, with the modifications hereinafter mentioned :

(1.) The Governor of the Isle of Wight may appoint to act for him in the Island five or more deputies, in like manner and subject to the like conditions and restrictions as deputy lieutenants are appointed under this Act, and such deputies shall act in the execution of the Militia Acts as if they were deputy lieutenants; the Militia of the Isle of Wight shall be raised in the same manner as and shall form part of the Militia of the county of Southampton; but shall remain within the said Isle as an internal defence thereof, unless Her Majesty otherwise orders.

(2.) The Militia Acts shall apply to the liberty or district of the Tower Division in the county of Middlesex, commonly known by the name of the Tower Hamlets, as if it were a separate county.

(3.) This Act shall apply to the Cinque Ports, two ancient towns, and their members, so far as is consistent with the special enactments relating thereto, as if they were a separate county, and the Warden of the Cinque Ports were the lieutenant of that county.

(4.) It shall be lawful for Her Majesty to appoint a lieutenant for the county of the town of Haverfordwest in like manner as if it were a separate county, and he may appoint deputy lieutenants under this Act.

(5.) A corps of miners may continue to be raised for the counties of Cornwall and Devon as part of the Militia, and the Militia Acts shall apply in like manner as if such corps were the Militia of a separate county, and the Warden of the Stannaries were the lieutenant of that county, and the quota for such corps may be fixed accordingly. The deputies appointed by the Warden shall be called deputy wardens of the Stannaries, and need not exceed twelve in number, and the persons appointed shall be qualified, in respect of residence and otherwise, as if they were appointed deputy lieutenants for a county comprising the counties of Cornwall and Devon, and any reference to the clerk of general meetings of lieutenancy shall be deemed to refer to the clerk of general meetings appointed by the Warden.

50. The city of London shall continue to be a separate county for the purposes of the Militia, and so far as is consistent with the

special enactments relating to such city this Act shall apply accordingly, and the Commissioners of Lieutenancy of the city shall for the purposes of this Act and those enactments be the lieutenant of the county, and the provisions of this Act with respect to deputy lieutenants shall not apply to the said city, and nothing in this Act shall affect the raising and levying of the trophy tax as heretofore in the said city.

Definitions.

51. In this Act, unless the context otherwise requires,—

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

The expression "Militia" means the regular Militia raised in the United Kingdom, or in any county or part thereof:

The expressions "militiaman" and "man in the Militia" include respectively a non-commissioned officer:

The expression "term of militia service" means, in the case of a man enlisted or re-engaged under this Act the term for which he has so enlisted or re-engaged, and in case of any other man the term for which he is enrolled:

The expression "Militia Acts" means this Act, and any Act passed or hereafter to be passed relating to the Militia, so far as it is for the time being in force:

The expression "prescribed" means prescribed by orders or regulations in force under this Act.

Expressions not above in this section mentioned have, unless the context otherwise requires, the same meaning as they have in the Army Act 1881.

Application of Act to Scotland.

52. In the application of this Act to Scotland, the following modifications shall be made; that is to say,

(1.) The Militia Acts shall apply to the county of the city of Edinburgh in like manner as to any other county, and the chief magistrate of that city shall, when there is no lieutenant appointed, appoint the deputy lieutenants under this Act.

(2.) The expression "land" includes heritages.

(3.) The expression "county rate" means "county general assessment."

(4.) The expression "overseer" means "inspector of the poor."

(5.) In the provisions respecting an action, prosecution, or proceeding against any person, "plaintiff" shall mean "pursuer" and "defendant" shall mean "defender" and "solicitor" shall mean "law agent."

Application of Act to Ireland.

53. In the application of this Act to Ireland, the following modifications shall be made: that is to say,

(1.) The Militia Acts shall apply to the counties of the cities of Dublin, Cork, and Limerick respectively in like manner as to any other county.

(2.) Lieutenants may be appointed for the county of the city of Waterford and the town and county of the town of Galway respectively in like manner as if such city and town were respectively separate counties, and such lieutenants may appoint deputy lieutenants under this Act.

(3.) As regards the qualifications of deputy lieutenants, the description shall state the denomination of any land forming the whole or part of the qualification, and in the case of any such city or town as above in this section mentioned the town clerk shall be substituted for the clerk of general meetings of lieutenancy, and the borough rate shall be substituted for the county rate.

(4.) The powers vested in Her Majesty with reference to lieutenants and their deputy lieutenants and vice-lieutenants may, subject to any direction of Her Majesty, be exercised by the Lord Lieutenant of Ireland, and anything in relation to lieutenants or deputy lieutenants, if authorized or required to be done by, to, or before Her Majesty, may, subject as aforesaid, be done by, to, or before the Lord Lieutenant, and if authorized or required to be done by or to a Secretary of State, may be done by or to the Chief Secretary or Under Secretary of the Lord Lieutenant.

(5.) The number of deputy lieutenants in each county and in each such city or town as above mentioned shall be such as Her Majesty, or, subject to any direction of Her Majesty, the Lord Lieutenant from time to time determines.

(6.) Anything required to be published in the London Gazette shall be published in the Dublin Gazette in lieu of the London Gazette.

(7.) Except as otherwise provided by this or any other Act, the lieutenants and deputy lieutenants appointed under this Act for any county, city, or town shall respectively have all the powers which by any Act for the time being in force are vested in the governors or

deputy governors respectively of counties or places in Ireland.

(8.) The expression "Lord Lieutenant" includes the Lords Justices or other Chief Governors or Governor of Ireland for the time being.

(9.) The expression "rate" includes "cess."

(10.) The constables shall perform the duties of overseers with respect to the publication of notices.

Repeal.

54. The Acts mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule specified;

Provided as follows:

(1.) So much of the said Acts as is set out in the third schedule to this Act shall continue in force in manner therein appearing, as if the same were enacted in the body of this Act.

(2.) Such repeal shall not revive any enactment, and shall not, save as herein otherwise provided, affect anything previously done or suffered, or any existing right or title, or any remedy in respect thereof, or the proof of any past act.

(3.) All commissions and appointments in relation to the Militia which exist at the commencement of this Act shall be of the same effect as if granted or made under this Act.

(4.) All orders, warrants, regulations, and directions in relation to the Militia which exist at the commencement of this Act shall be of the same effect as if they were orders and regulations made under this Act, and may be revoked or altered accordingly.

(5.) The quota in force at the commencement of this Act for any county, or for any place which is under this Act deemed to be a county, shall continue to be the quota appointed for that county or place until another quota is appointed under this Act.

(6.) The several militiamen who before the commencement of this Act have been attested for service, whether before a justice of the peace or an officer, or have been re-engaged, shall be deemed to have been duly attested and re-engaged as if they had been enlisted or re-engaged under this Act, and shall continue

to serve accordingly, and shall be subject to and be deemed to be raised under this Act, and their service before the commencement of this Act shall be reckoned as if the same had taken place under this Act.

(7.) A member of the permanent staff of the Militia who has been enlisted or re-engaged in pursuance of any enactment hereby repealed shall continue to serve in like manner as if the said enactment had not been repealed.

(8.) Where a member of the permanent staff of the Militia or a militiaman was enlisted or re-engaged before the passing of the Regulation of the Forces Act 1881, or before the date of any order or regulation made under the said Act, nothing in the said Act, order, or regulation, or in this Act shall render such member or man liable without his consent to serve in or be appointed, transferred, posted, or attached to any military body in or to which he could not have been required without his consent to serve or be appointed, transferred, or attached if the Regulation of the Forces Act 1881 or this Act, or the said order or regulation, as the case may be, had not been passed or made.

(9.) In the case of any offence committed before the commencement of this Act, if any proceeding for the trial or punishment of the offender has been commenced before the commencement of this Act, such proceeding may be carried on and completed, and the offender may be tried and punished, as if this Act had not passed; but, save as aforesaid, this Act shall apply to the arrest, trial, conviction, and punishment of a person accused of an offence committed before the commencement of this Act, (including the dealing with the case by the commanding officer) so however that a person shall not be subject for any such offence to any greater punishment than that to which he was subject before the commencement of this Act, nor to any punishment for anything done before the commencement of this Act which at the time of its being done was not an offence punishable by law.

(10.) Any unrepealed enactment referring to any provisions hereby repealed, or to any provisions repealed by the Militia (Voluntary Enlistment) Act, 1875, shall be construed as referring to the corresponding provisions of this Act.

SCHEDULES.

FIRST SCHEDULE.

The following places are for the purposes
of the Militia Acts

to be included in the
following counties.

ENGLAND.

See 42 Geo.3. c. 90, ss. 19, 149, 151. 38 & 39 Vict. c. 69, ss. 2, 80.	County of the city of Chester	-	-	-	-	Chester.
	County of the city of Exeter	-	-	-	-	Devon.
	County of the town of Poole	-	-	-	-	Dorset.
	County of the city of Gloucester	-	-	-	-	Gloucester.
	County of the city of Bristol	-	-	-	-	Gloucester.
	County of the city of Canterbury	-	-	-	-	Kent.
	County of the city of Lincoln	-	-	-	-	Lincoln.
	County of the city of Norwich	-	-	-	-	Norfolk.
	County of the town of Newcastle-upon-Tyne	-	-	-	-	Northumberland.
	Borough and town of Berwick-upon-Tweed	-	-	-	-	Northumberland.
	County of the town of Nottingham	-	-	-	-	Nottingham.
	County of the town of Southampton	-	-	-	-	Southampton.
	County of the city of Lichfield	-	-	-	-	Stafford.
	County of the city of Worcester	-	-	-	-	Worcester.
	County of the city of York	-	-	-	-	West Riding of York.
	County of the town of Kingston-upon-Hull	-	-	-	-	East Riding of York.
	County of the town of Carmarthen	-	-	-	-	Carmarthen.
	County of the town of Haverfordwest	-	-	-	-	Pembroke.
	The constabulary of Craike	-	-	-	-	North Riding of York.
	That part of the parish of Maker which lies in the county of Cornwall	-	-	-	-	Cornwall.
	Town and parish of Wokingham	-	-	-	-	Berks.
	The township of Filey	-	-	-	-	East Riding of York.
	Threapwood	-	-	-	-	Parish of Worthenbury in Flint.
	Parish of Saint Martin, called Stamford Baron, in the suburbs of the borough and town of Stamford on the south side of the waters called Welland	-	-	-	-	Lincoln.

IRELAND.

See 49 Geo.3. c. 120, s. 2. 38 & 39 Vict. c. 69, ss. 2, 3.	County of the city of Waterford	-	-	-	-	Waterford.
	County of the city of Kilkenny	-	-	-	-	Kilkenny.
	County of the town of Drogheda	-	-	-	-	Louth.
	County of the town of Londonderry	-	-	-	-	Londonderry.
	County of the town of Galway	-	-	-	-	Galway.

SECOND SCHEDULE.

Acts repealed.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
37 Geo. 3. c. 25	- An Act for the better raising and ordering the militia forces of the Tower Hamlets in the county of Middlesex.	Section three, from "and also such" to "the said Hamlets," and sections thirteen, fourteen, and sixteen to eighteen.
42 Geo. 3. c. 72	- An Act for repealing an Act made in the thirty-eighth year of the reign of His present Majesty, intituled "An Act for raising a body of miners in the counties of Cornwall and Devon, for the defence of the Kingdom during the present war"; and for the more effectually raising and regulating a body of miners for the defence of Great Britain.	Section one, from "and the said warden shall constitute" to "are entitled to rank," sections two, three, and thirty-one, section thirty-three, from "and that all fines" to the end of the section, and sections thirty-four and thirty-five.
42 Geo. 3. c. 90	- An Act for amending the laws relating to the militia in England, and for augmenting the militia.	Section one hundred forty-eight, section one hundred and forty-nine, the words "and officers," and from "and such number of officers," to the end of the section, section one hundred and fifty, from "shall appoint" to "and shall and," and from "and shall appoint five" to the end of the section, and sections one hundred and fifty-one, one hundred and fifty-two, one hundred and seventy-one, one hundred and seventy-seven, and one hundred and seventy-eight.
42 Geo. 3. c. 91	- An Act to raise and establish a militia force in Scotland.	Sections fifteen, thirty-two, one hundred and forty-one, one hundred and forty-two, one hundred and forty-three, one hundred and sixty-six, one hundred and seventy-three, and one hundred and seventy-four.
43 Geo. 3. c. 50	- An Act for more speedily completing the militia of Great Britain, raised under two Acts passed in the forty-second year of the reign of His present Majesty; and for amending the said Acts.	Section five, section six, from "either for the purpose" to "for that purpose or," and section eight.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
49 Geo. 3. c. 120	- An Act for amending and reducing into one Act of Parliament the several laws for raising and training the militia of Ireland.	Sections two, three, five, six, section one hundred and eighteen, from "every such person" to "by virtue of this Act, and," sections one hundred and thirty to one hundred and thirty-eight, section one hundred and forty-one, from "or within four months" to "enrolling volunteers," and sections one hundred and forty-five to one hundred and forty-seven.
51 Geo. 3. c. 114	- An Act to permit the services of the regiment of miners of Cornwall and Devon to be extended to Ireland.	The whole Act so far as unrepealed.
51 Geo. 3. c. 118	- An Act to permit the interchange of the British and Irish militias respectively.	The whole Act so far as unrepealed.
52 Geo. 3. c. 29	- An Act to amend the laws relating to the militia of Ireland.	The whole Act so far as unrepealed.
53 Geo. 3. c. 48	- An Act to amend the laws for raising and training the militia of Ireland.	Sections three to five.
53 Geo. 3. c. 132	- An Act to extend the services of the militia of the Tower Hamlets to all parts of the United Kingdom.	The whole Act so far as unrepealed.
55 Geo. 3. c. 65	- An Act to amend the laws relating to the militia of Great Britain.	The whole Act so far as unrepealed, except section eight.
1 Geo. 4. c. 100.	- An Act for amending and reducing into one Act of Parliament, two several Acts passed in the thirty-sixth and thirty-ninth years of the reign of His late Majesty King George the Third, for the better ordering and further regulating of the militia of the city of London.	Sections two, four, five, and seven, section nine, as to the form of oath thereby prescribed, sections nineteen to twenty-one, twenty-three to twenty-six, and twenty-nine, section forty-two, from "provided always" to the end of the section, sections forty-six and forty-seven, section forty-eight, from "provided always" to the end of the section, and section forty-nine.
15 & 16 Vict. c. 50	- An Act to consolidate and amend the laws in relation to the militia in England.	Sections eight and nine, section twenty-four, the words "as herein-before directed," section thirty, section thirty-one, section thirty-five, section thirty-six, from "but the number" to the end of the section, and section thirty-eight from "in apportioning" down to "but so that," and from "and the oath to be taken," down to "sovereign for the time being."
17 & 18 Vict. c. 105	- The Militia Law Amendment Act, 1854.	Section fifty-two.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
23 & 24 Vict. c. 94	- An Act to amend the laws relating to the militia.	Sections ten to twelve, section twenty, and section twenty-one.
23 & 24 Vict. c. 120	- An Act to amend the laws relating to the ballots for the militia in England, and to suspend the making of lists and ballots for the militia of the United Kingdom.	Section nineteen.
28 & 29 Vict. c. 46	- An Act to suspend the making of lists and the ballots for the militia of the United Kingdom.	Section four from "or of any meeting" to the end of the section.
32 & 33 Vict. c. 66	- An Act to continue and amend an Act to defray the charge of the pay, clothing, and contingent and other expenses of the disembodied militia in Great Britain and Ireland; to grant allowances in certain cases to subaltern officers, adjutants, paymasters, quartermasters, surgeons, assistant surgeons, and surgeons' mates of the militia; and to authorise the employment of the non-commissioned officers.	The whole Act.
33 & 34 Vict. c. 67	- The Army Enlistment Act, 1870	Section twenty, so far as it relates to the militia.
34 & 35 Vict. c. 86	- The Regulation of the Forces Act, 1871.	Section six from "saving nevertheless to the lieutenants of counties," down to "proceedings incidental thereto," and so much of the rest of the section as relates to the militia; so much of section seven as relates to the militia; sections eight and fourteen; the words "militia or" wherever they occur in section seventeen, section eighteen, and the definition of "militia" in section nineteen.
36 & 37 Vict. c. 84	- An Act to explain the Militia Pay Acts, 1868 and 1869, and to facilitate the sale of property held for militia purposes.	Section one.
37 & 38 Vict. c. 29	- The Militia Law Amendment Act, 1874.	The whole Act.
38 & 39 Vict. c. 69	- The Militia (Voluntary Enlistment) Act, 1875.	The whole Act.
41 & 42 Vict. c. 10	- An Act for punishing mutiny and desertion, and for the better payment of the army and their quarters.	Sections forty-four, fifty-seven, fifty-eight, and eighty, and the schedule.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
42 & 43 Vict. c. 32	The Army Discipline Regulation (Commencement) Act, 1879.	Section five from "as respects" to "and also," and so much of the rest of the section as keeps in force any portion of the Army Mutiny Act relating to the Militia.
44 & 45 Vict. c. 57	The Regulation of the Forces Act, 1881.	Section two from "the expression militia" to "non-commissioned officer," sections three to eight, and so much of sections thirty-eight, thirty-nine and fifty-three as relates to the Militia.

THIRD SCHEDULE.

Local Militia.

Enactments re-enacted with respect to local Militia.

33 & 34 Vict. c. 67. s. 20.

Service of notices on local Militia.

A Secretary of State may require the chief officer of police in every district in the United Kingdom to cause to be served within his district any notice which the Secretary of State may desire to be served on any member of the local Militia in such district; and all officers and men of every police force shall conform to the orders of a Secretary of State in relation to the service of such notices given through such chief officer.

34 & 35 Vict. c. 86. s. 6.

Jurisdiction of Her Majesty in relation to the local Militia.

(1.) All jurisdiction, powers, duties, command, and privileges over, of, or in relation to the local Militia, or any part thereof, which under any Acts, other than this Act, are vested in or exerciseable by the lieutenants of counties, shall be exerciseable by Her Majesty through a Secretary of State, or any officers to whom Her Majesty may, by and with the advice of a Secretary of State, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving nevertheless to the lieutenants of counties their jurisdictions, powers, duties, and privileges in relation to raising the local Militia by ballot, and the proceedings incidental thereto.

(2.) All officers in the local Militia shall be appointed by and hold commissions from Her Majesty; such commissions shall be prepared,

authenticated, and issued in the manner in which commissions of officers in Her Majesty's land forces are prepared, authenticated, and issued, according to any law or custom for the time being in force.

(3.) First appointments to the lowest rank of officer in any corps of local Militia shall be given to persons recommended by the lieutenant of the county to which the corps belongs. if a person approved by Her Majesty is recommended by such lieutenant for any such appointment within thirty days after notice of a vacancy for such appointment has been given to such lieutenant by a Secretary of State, which notice may be given by a letter addressed to him by post.

34 & 35 Vict. c. 86. s. 7.

The local Militia shall consist of such number of men as may from time to time be provided by Parliament.

34 & 35 Vict. c. 86. s. 8.

Men enrolled in the local Militia shall attend at the head-quarters of the corps in which they are enrolled, or at such other place and at such times as may be directed by a Secretary of State, for preliminary instruction for a period of not more than six months.

34 & 35 Vict. c. 86. s. 14.

All returns required or authorised to be made in relation to the local Militia by any Act for the time being in force shall be made to such persons as may be prescribed by a Secretary of State.

34 & 35 Vict. c. 86. s. 19.

In this schedule, if not inconsistent with the context,—

The expression “a Secretary of State” means “one of Her Majesty’s principal Secretaries of State”;

The expression “lieutenant of a county” includes a vice lieutenant, also the Governor

of the Isle of Wight, the Warden of the Cinque Ports, the Warden of the Stannaries, the Constable of the Tower, and any other officer or officers however named having a jurisdiction in relation to the local Militia similar to that of lieutenant, or lieutenants, or deputy lieutenants of a county.

CHAP. 50.

Municipal Corporations Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

PRELIMINARY.

1. *Short title.*
2. *Division of Act into Parts.*
3. *Extent.*
4. *Commencement.*
5. *Repeal.*
6. *Application.*
7. *Interpretation and construction.*

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

8. *Name of municipal corporation.*

Burgesses.

9. *Qualification of burgess.*

Council; Mayor, Aldermen, and Councillors.

10. *Constitution of council.*
11. *Qualification of councillor.*
12. *Disqualifications for being councillor.*
13. *Term of office and rotation of councillors.*
14. *Number, term of office, and rotation of aldermen.*
15. *Qualification, term of office, salary, precedence, and powers of mayor.*
16. *Power of mayor to appoint deputy.*

Officers of Council.

17. *The town clerk and deputy.*
18. *The treasurer.*
19. *Other borough officers.*
20. *Security by and remuneration of officers.*
21. *Accountability of officers.*

Meetings and Proceedings of Council; Committees.

22. *Quarterly and other meetings of council; appointment of committees, minutes, &c.*

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- 23. *Power of council to make byelaws.*
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Accounts and Audit.

- 25. *The borough auditors.*
- 26. *Half-yearly accounts of treasurer.*
- 27. *Audit and publication of treasurer's accounts.*
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- 29. *Revising assessors in non-parliamentary boroughs.*

Division of Borough into Wards, or alteration of Wards.

- 30. *Proceedings for division of borough into wards or alteration of wards.*

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- 32. *Claim by occupier to be rated.*
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- 37. *Re-eligibility of office holders.*
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SCHEDULES.

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations in England and Wales. (18th August 1882.)

WHEREAS divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed:

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of Municipal Corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted after the passing of that Act; and that Act having been from time to time much altered and added to by other Acts, it is expedient that all the Acts aforesaid be reduced into one Act with some amendments:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.**PRELIMINARY.**

1. This Act may be cited as the Municipal Corporations Act, 1882.

2. This Act is divided into Parts, as follows:

PART I.—Preliminary.

PART II.—Constitution and government of borough.

PART III.—Preparations for and procedure at elections.

PART IV.—Corrupt practices and election petitions.

PART V.—Corporate property and liabilities.

PART VI.—Charitable and other trusts and powers.

PART VII.—Borough fund: borough rate: county rate.

PART VIII.—Administration of justice.

PART IX.—Police.

PART X.—Freemen.

PART XI.—Grant of charters.

PART XII.—Legal proceedings.

PART XIII.—General.

3. This Act shall not extend to Scotland or Ireland.

4. This Act shall commence and have effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two.

5. The enactments described in the First Schedule are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place.

7.—(1.) In this Act—

“Borough” means, unless a contrary intention appears, a city or town to which this Act applies:

“Municipal corporation” means the body corporate constituted by the incorporation of the inhabitants of a borough:

“Municipal Corporations Act, 1835,” means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September one thousand eight hundred and thirty-five.

“Municipal Corporations Acts” means this Act and any Act to be passed amending this Act:

“Burgess” includes citizen:

“Corporate seal” means the common seal of a municipal corporation:

“Corporate office” means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

“Corporate land” means land belonging to or held in trust for a municipal corporation:

“Municipal election” means an election to a corporate office:

“Parliamentary borough” means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large.

“Parliamentary election” means an election of a member to serve in Parliament:

“Parish” means any place for which a separate poor rate is or can be made:

“Overseers” means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

“County” does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

“Trustees” means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

“Person” includes a body of persons corporate or unincorporate:

“Treasury” means the Commissioners of Her Majesty’s Treasury:

“The Secretary of State” means one of Her Majesty’s Principal Secretaries of State:

“High Court” means Her Majesty’s High Court of Justice:

“Justice” means one of Her Majesty’s justices of the peace:

“Borough civil court” means an inferior court of record for the trial of civil actions which by charter, custom, or otherwise, is or ought to holden in a borough, but does not include a county court:

“Bank of England” means the Governor and Company of the Bank of England:

“Schedule” means schedule to this Act, and “Part” means Part of this Act:

“Writing” includes print, and “written” includes printed.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

CONSTITUTION AND GOVERNMENT OF BOROUGH.

Corporate Name.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

Burgesses.

9.—(1.) A person shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

(2.) A person shall not be entitled to be enrolled as a burgess unless he is qualified as follows:

(a.) Is of full age; and

(b.) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (in this Act referred to as qualifying property) in the borough; and

(c.) Has during the whole of those twelve months resided in the borough, or within seven miles thereof; and

(d.) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate; and

(e.) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceding fifth of January.

(3.) Every person so qualified shall be

entitled to be enrolled as a burgess, unless he—

- (a.) Is an alien; or
- (b.) Has within the twelve months aforesaid received union or parochial relief or other alms; or
- (c.) Is disqualified under any Act of Parliament.

Council; Mayor, Aldermen, and Councillors.

10.—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

(2.) The council shall consist of the mayor, aldermen, and councillors.

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor, unless he—

- (a.) Is enrolled and entitled to be enrolled as a burgess; or
- (b.) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles of the borough, and is entered in the separate non-resident list directed by this Act to be made; and
- (c.) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

12.—(1.) A person shall be disqualified for being elected and for being a councillor, if and while he—

- (a.) Is an elective auditor or a revising assessor, or holds any office or place of profit,

other than that of mayor or sheriff, in the gift or disposal of the council; or

- (b.) Is in holy orders, or the regular minister of a dissenting congregation; or
- (c.) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council:

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in—

- (a.) Any lease, sale, or purchase of land, or any agreement for the same; or
- (b.) Any agreement for the loan of money, or any security for the payment of money only; or
- (c.) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or
- (d.) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or
- (e.) Any railway company, or any company incorporated by Act of Parliament or Royal charter, or under the Companies Act, 1862.

13.—(1.) The term of office of a councillor shall be three years.

(2.) On the ordinary day of election of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election.

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

14.—(1.) The aldermen shall be fit persons elected by the council.

(2.) The number of aldermen shall be one third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

15.—(1) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such.

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

(4.) He may receive such remuneration as the council think reasonable.

(5.) He shall, subject to the provisions of this Act respecting justices, have precedence in all places in the borough.

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice or in any judicial capacity.

Officers of Council.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough.

(2.) The town clerk shall hold office during the pleasure of the council.

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6.) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.

18.—(1.) The council shall from time to time appoint a fit person, not a member

of the council, to be the treasurer of the borough.

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connexion with his office, shewing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(a.) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(b.) After three days notice in writing, signed by the town clerk or by three members of the council, given or left at his usual or last-known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council or as they direct;

a court of summary jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

*Meetings and Proceedings of Council:
Committees.*

22.—(1.) The rules in the Second Schedule shall be observed.

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval.

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest.

(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body.

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

Byelaws.

23.—(1.) The council may, from time to time, make such byelaws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough, and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a byelaw shall not be made unless at least two thirds of the whole number of the council are present.

(3.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall.

(4.) Such a byelaw shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the byelaw or part thereof, the byelaw or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those forty days, to enlarge the time within which the byelaw shall not come into force, and in that case the byelaw shall not come into force until after the expiration of that enlarged time.

(5.) Any offence against such a byelaw may be prosecuted summarily.

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

24. The production of a written copy of a byelaw made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal shall, until the contrary is proved, be sufficient evidence of the due making and existence of the byelaw, and, if it is so stated in the copy, of the byelaw having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the byelaw.

Accounts and Audit.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.

(2.) An elective auditor must be qualified to be a councillor, but may not be a member of the council or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year.

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors.

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

Revising Assessors.

29.—(1.) In every borough whereof no part of the area is coextensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses.

(2.) Every person shall be eligible who is qualified to be a councillor and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year.

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy,

to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

Division of Borough into Wards, or alteration of Wards.

30.—(1.) If two thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards.

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the London Gazette one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the London Gazette, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the London Gazette, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules.

Supplemental and Exceptional Provisions.

31. In and for the purposes of this Act—

(a.) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case.

(b.) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate.

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

33.—(1.) Where a person succeeds to qualifying property by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be inrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only—

(a.) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority; or

(b.) That his child has been admitted to and taught in any public or endowed school.

34.—(1.) Every qualified person elected to a corporate office, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within five days after notice of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine.

(2.) If there is no byelaw determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(a.) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(b.) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily.

35. A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration.

36.—(1.) A person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

37. A person ceasing to hold a corporate office shall, unless disqualified to hold the office, be re-eligible.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years.

39.—(1.) If the mayor, or an alderman or councillor—

(a.) Is declared bankrupt, or compounds by deed with his creditors, or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or

(b.) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months: he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall

forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) Where a person becomes so disqualified by being declared bankrupt, or compounding, or making an arrangement or composition, as aforesaid, the disqualification, as regards subsequent elections, shall, in case of bankruptcy, cease on his obtaining his order of discharge, and shall, in case of a compounding or composition as aforesaid, cease on payment of his debts in full, and shall, in case of an arrangement as aforesaid, cease on his obtaining his certificate of discharge.

(4.) Where a person becomes so disqualified by absence, he shall be liable to the same fine as for non-acceptance of office, recoverable summarily, but the disqualification shall, as regards subsequent elections, cease on his return.

40.—(1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of councillor being filled at the same election, the councillor elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the council.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

41.—(1.) If any person acts in a corporate office without having made the declaration by this Act required, or without being qualified at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.

42.—(1.) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

(3.) A Burgess roll shall not be liable to be questioned by reason of a defect in the title, or want of title, of the mayor or any revising authority by whom it is revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

43. If there is no town clerk, and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorized or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

PART III.

PREPARATIONS FOR AND PROCEDURE AT ELECTIONS.

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878.

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised; and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule.

(3.) In either case the lists shall be styled the parish burgess lists.

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough.

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day.

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts.

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll.

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878, it shall have the same effect as the original, and may be delivered instead thereof.

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts, the arrangement of the lists and rolls shall be alphabetical.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act.

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two

months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a mandamus to the mayor to insert his name in the burgess roll; and thereupon the court shall inquire into the title of the applicant to be enrolled.

(3.) If the court grants a mandamus, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy.

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878, the proceeds of sale shall go to the borough fund.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough.

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll.

Election of Councillors.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of Councillors for each ward.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise.

(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward.

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is

prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

52. The ordinary day of election of councillors shall be the first of November.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor.

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the Council at the meeting of the ninth of November.

54. Nine days at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof, and publish it by fixing it on the town hall, and, in the case of a ward election, in some conspicuous place in the ward.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

56.—(1.) If the number of valid nominations exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination, the retiring councillors shall be deemed to be re-elected.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary

election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day.

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence, or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock.

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorize the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions or either of them:

(a.) Are you the person enrolled in the burges[s] [or ward] roll now in force for this borough [or ward] as follows [*read the whole entry from the roll*]?

(b.) Have you already voted at the present election [*add, in case of an election for several wards, in this or any other ward*]?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorized, no inquiry shall be permitted at an election as to the right of any person to vote.

Election of Aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council.

(2.) The election shall be held immediately after the election of the mayor, or, if there is a sheriff, the appointment of the sheriff.

(3.) An outgoing alderman, although mayor elect, shall not vote.

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes.

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

Election of Mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November.

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote.

Election of Auditors and Assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint.

(2.) The ordinary day of election of revising assessors shall be the first of March.

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting. The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the

Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(4.) An elector shall not vote for more than one person to be elective auditor or revising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the town hall or some one other convenient place appointed by the mayor.

(6.) Save as in this section provided, all the provisions of this Act with respect to the nomination and election of councillors for a borough not having wards shall apply to the nomination and election of elective auditors and revising assessors.

Supplemental and Exceptional Provisions.

63. For all purposes connected with and having reference to the right to vote at municipal elections words in this Act importing the masculine gender include women.

64. The council may divide the borough or any ward into polling districts, and thereupon the overseers shall, as far as practicable, make out the parish burgess lists so as to divide the names in conformity with the polling districts.

65. Any notice required to be given in connexion with a municipal election may, as to elective auditors and revising assessors, be comprised in one notice, and may, as to ward elections, comprise matter necessary for several wards.

66.—(1.) On a casual vacancy in a corporate office, the election shall be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting in the execution of his powers and duties as to elections under this Act, the council shall forthwith choose an alderman to execute those powers and duties in the place of the mayor.

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned to be returning officer at a ward election, the mayor may appoint to act in his stead another alderman, or, if the number of aldermen does not

exceed the number of wards, a councillor not being a councillor for that ward, and not being enrolled in the ward roll for that ward.

68. If a person is elected councillor in more than one ward, he shall, within three days after notice thereof, choose, by writing signed by him and delivered to the town clerk, or in his default the mayor shall, within three days after the time for choice has expired, declare, for which of those wards he shall serve, and the choice or declaration shall be conclusive.

69. A municipal election shall not be held in any church, chapel, or other place of public worship.

70.—(1.) If a municipal election is not held on the appointed day or within the appointed time, it may be held on the day next after that day or the expiration of that time.

(2.) If a municipal election is not held on the appointed day or within the appointed time, or on the day next after that day or the expiration of that time, or becomes void, the municipal corporation shall not thereby be dissolved or be disabled from electing, but the High Court may, on motion, grant a mandamus for the election to be held on a day appointed by the court.

(3.) Thereupon public notice of the election shall, by such person as the court directs, be fixed on the town hall, and shall be kept so fixed for at least six days before the day appointed for the election; and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll.

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act.

73. Every municipal election not called in question within twelve months after the

election, either by election petition or by information in the nature of a quo warranto, shall be deemed to have been to all intents a good and valid election.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour.

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(2.) If—

(a.) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act; or

(b.) A town clerk neglects or refuses to receive, print, and publish, a parish burgess list or list of claimants or respondents, as required by this Act; or

(c.) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto;

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff.

76.—(1.) If the Ballot Act, 1872, ceases to be in force, so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

PART IV.

CORRUPT PRACTICES AND ELECTION PETITIONS.

Corrupt Practices.

77. In this Part—

“Bribery,” “treating,” “undue influence,” and “personation,” include respectively anything done before, at, after, or with respect to a municipal election, which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections:

“Corrupt practice” means bribery, treating, undue influence, or personation:

“Candidate” means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office:

“Canvasser” means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election:

“Voter” means a burgess or a person who votes or claims to vote at a municipal election:

“Election court” means a court constituted under this Part for the trial of an election petition:

“Municipal election petition” or “election petition” means a petition under this Part complaining of an undue municipal election:

“Parliamentary election petition” means a petition under the Parliamentary Elections Act, 1868:

“Prescribed” means prescribed by general rules made under this Part:

“Borough” and “election” when used with reference to a petition mean the borough and election to which the petition relates.

78. A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election.

79.—(1.) Where it is found by the report of an election court that a corrupt practice has been committed by or with the knowledge and consent of a candidate at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void; and he shall (whether elected or

not) during seven years from the date of the report be subject to the following disqualifications:

He shall be incapable of—

- (a.) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess:
- (b.) Acting as a justice or holding any judicial office:
- (c.) Being elected to or sitting or voting in Parliament:
- (d.) Being registered or voting as a parliamentary voter:
- (e.) Being employed by a candidate in a parliamentary or municipal election:
- (f.) Acting as overseer or as guardian of the poor.

(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

(3.) If after a person has become disqualified under this Part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

80. If it is found by an election court that a candidate has by an agent been guilty of a corrupt practice at a municipal election, or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.

81. A municipal election shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

82.—(1.) A burgess of a borough shall not be retained or employed for payment or reward by or on behalf of a candidate at a municipal

election for that borough or any ward thereof as a canvasser for the purposes of the election.

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

(3.) An agent or canvasser retained or employed for payment or reward for any of the purposes of a municipal election shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

83. If a candidate or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.

84.—(1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election, with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony.

(2.) The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this part at the election.

85. The votes of persons in respect of whom any corrupt practice is proved to have been committed at a municipal election shall be struck off on a scrutiny.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election.

Election Petitions.

87.—(1.) A municipal election may be questioned by an election petition on the ground—

- (a.) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(b.) That the election was avoided by corrupt practices or offences against this Part committed at the election; or

(c.) That the person whose election is questioned was at the time of the election disqualified; or

(d.) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election shall not be questioned on any of those grounds except by an election petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate at the election.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition.

(3.) The petition shall be in the prescribed form and shall be signed by the petitioner, and shall be presented in the prescribed manner to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough.

(4.) It shall be presented within twenty-one days after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

89.—(1.) At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges, and expenses which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount, not exceeding five hundred pounds, as the High Court, or a Judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money, or by recognisance entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner serve on the respondent a notice of the presentation of the petition, and

of the nature of the proposed security, and a copy of the petition.

(4.) Within five days after service of the notice the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to a recognisance shall be decided in the prescribed manner.

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

91.—(1.) The prescribed officer shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner.

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for the purposes of this Part the petition shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

92.—(1.) An election petition shall be tried by an election court consisting of a barrister qualified and appointed as in this section provided, without a jury.

(2.) A barrister shall not be qualified to con-

stitute an election court if he is of less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practises as a barrister.

(4.) As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each.

(5.) If a commissioner to whom the trial of a petition is assigned, dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(6.) The election court shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

93.—(1.) An election petition shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial.

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held.

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void, and shall forthwith certify in writing the determination to

the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this Part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(a.) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

(b.) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(c.) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final.

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial *à nisi prius*.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had

presented a petition against the election of that person.

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision, shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at nisi prius, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing, require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer questions the answers whereof criminated or tended to criminate him, and that he answered all such questions.

(6.) If any information, indictment, or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein.

(7.) The giving of or refusal to give any such certificate by the election court shall be final and conclusive.

(8.) A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury, be admissible in evidence in any proceeding, civil or criminal.

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

95.—(1.) A petitioner shall not withdraw an election petition without the leave of the election court or High Court on special application, made in the prescribed manner, and at the prescribed time and place.

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough.

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner, and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition

shall not be made except with the consent of all the petitioners.

96.—(1.) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

97.—(1.) If before the trial of an election petition a respondent other than a returning officer—

(a.) Dies, resigns, or otherwise ceases to hold the office to which the petition relates; or

(b.) Gives the prescribed notice that he does not intend to oppose the petition; the prescribed notice thereof shall be given in the borough, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation of an election petition, and the proceedings consequent thereon, except such as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and proportions as the election court determines; and in particular any costs, charges, or expenses which in the opinion of the court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or of the respondent, and any needless expense incurred or caused on the part of the petitioner or respon-

dent, may be ordered to be defrayed by the parties by whom it has been incurred or caused, whether they are or not on the whole successful.

(2.) The costs may be taxed in the prescribed manner, but according to the same principles as costs between solicitor and client in an action in the High Court, and may be recovered as the costs of such an action, or as otherwise prescribed.

(3.) If a petitioner neglects or refuses for three months after demand to pay to any person summoned as a witness on his behalf, or to the respondent, any sum certified to be due to him for his costs, charges, and expenses, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and the prescribed officer shall thereon certify the recognisance to be forfeited, and it shall be dealt with as a forfeited recognisance relating to a parliamentary election petition.

99.—(1.) The town clerk shall provide proper accommodation for holding the election court; and any expenses incurred by him for the purposes of this section shall be paid out of the borough fund or borough rate.

(2.) All chief and head constables, superintendents of police, head-boroughs, gaolers, constables, and bailiffs shall give their assistance to the election court in the execution of its duties, and if any gaoler or officer of a prison makes default in receiving or detaining a prisoner committed thereto in pursuance of this Part, he shall be liable to a fine not exceeding five pounds for every day during which the default continues.

(3.) The election court may employ officers and clerks as prescribed.

(4.) A shorthand writer shall attend at the trial of an election petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial. He shall take down the evidence at length. A transcript of the notes of the evidence taken by him shall, if the election court so directs, accompany the certificate of the election court. His expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the court.

100.—(1.) The judges for the time being on the rota for the trial of parliamentary election petitions, may from time to time make, revoke, and alter General Rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the

practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon.

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition and the proceedings thereon as if the petition were an ordinary action within its jurisdiction.

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section, and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition, and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate.

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid, wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the persons, and in the manner following (namely):

(a.) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(b.) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

102. Where a candidate who has been elected to a corporate office is, by a certificate of an election court or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration.

103. Where on an election petition the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy; and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

PART V.

CORPORATE PROPERTY AND LIABILITIES.

Corporate Land.

105. A municipal corporation may contract for the purchase of and hold any land not exceeding in the whole five acres, either in or out of the borough, and thereon, or on any land belonging to or held in trust for the Corporation, may build a town hall, council house, justices' room, with or without a police station and cells, or lock-ups, or a quarter and petty sessions-house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough.

106. The council may, with the approval of the Treasury, borrow at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate, or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorized to build.

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section.

108.—(1.) The council shall not, unless authorized by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury.

(2.) The council shall not, unless authorized by Act of Parliament, lease or agree to lease any corporate land without the approval of the Treasury, except as follows:

(a.) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.

(b.) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—

(i.) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or

(ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or

(iii.) Where the lessee or intended lessee agrees to erect a building or buildings

thereon of greater yearly value than the land,—of land proper for gardens, yards, curtilages or other appurtenances to be used with any other house or other building erected or to be erected on any such land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

109. The council may, with the approval of the Treasury, dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the Treasury approve.

110. In the following cases,—

(a.) Where a body corporate of a borough was on the fifth of June one thousand eight hundred and thirty-five bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions:

(b.) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of the borough may renew the lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and on the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as the council could or might have done if this Act had not been passed.

Working Men's Dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land into sites for working men's dwellings, and obtains the

approval of the Treasury for so doing, the corporation may, for that purpose, make grants or leases for terms of nine hundred and ninety-nine years, or any shorter term, of any parts of the corporate land.

(2.) The corporation may make on the land any roads, drains, walls, fences, or other works requisite for converting the same into building land, at an expense not exceeding such sum as the Treasury approve.

(3.) The corporation may insert in any grant or lease of any part of the land (in this section referred to as the site) provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the building, and prohibiting the division of the site or building, and any addition to or alteration of the character of the building, without the consent of the corporation, and for the re-vesting of the site in the corporation, or its re-entry thereon, on breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on the parties.

(5.) All costs and expenses incurred or authorized by a corporation in carrying into execution or otherwise in pursuance of this section, shall be paid out of the borough fund and borough rate, or by money borrowed by the corporation under this Part.

(6.) In this section the term working men's dwellings means buildings suitable for the habitation of persons employed in manual labour and their families; but the use of part of a building for purposes of retail trade or other purposes, approved by the council, shall not prevent the building from being deemed a dwelling.

Repayment of Loans.

112.—(1.) Where the Treasury approve a mortgage or charge under this Part they may, as a condition of their approval, require that the money borrowed on the security of the mortgage or charge be repaid, with all interest thereon, in thirty years, or any less period, and either by instalments or by means of a sinking fund, or both.

(2.) In that case the sums required for providing for the repayment of the principal and interest of the money borrowed shall be by virtue of this Act a charge on all or any of the following securities, namely, the land comprised in the mortgage (without prejudice to the security thereby created), or any other corporate land, or the borough fund, or the borough or other rates legally applicable to payment of the money borrowed or of the expenses which the money is borrowed to defray, as the Treasury direct.

113.—(1.) Where money borrowed under this Part is directed to be repaid by means of a sinking fund, the council shall, out of the rents and profits of the land on which, or out of the borough fund or rates on which, the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such government annuities, as the Treasury direct, and shall also from time to time invest in like manner all dividends of those annuities.

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made.

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the Treasury addressed to the chief accountant of the Bank of England.

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the Treasury, shall be sufficient authority to the Bank for permitting any such transfer.

Purchase or Compensation Money.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the Treasury approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested, to the corporation or the treasurer, the Treasury may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

(2.) The foregoing provisions of this Part applicable in the case of a sinking fund, as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The Treasury shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation shall cease; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from investment under the Act

of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision.

115.—(1.) Where the Treasury approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.

(2.) If the Treasury direct the money to be invested in Government annuities, the foregoing provisions of this Part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.

(3.) If the Treasury consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer.

116. The Treasury may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval, may require the like provision to be made as they are authorized to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this Part shall be applicable accordingly; but it shall not be imperative on the Treasury to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the permanent benefit of the borough, or otherwise, under the special circumstances of the case, the Treasury in their discretion think fit to dispense with the condition.

Misappropriation.

117. If any person authorized to receive money to arise from the sale of any annuities

or securities purchased or transferred under the foregoing provisions of this Part, or under any Act repealed by this Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the Treasury in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861, applicable to a person guilty of a misdemeanour under section seventy-five of that Act, or to the provisions of any enactment for the time being substituted for that section.

Corporate Stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request sign and seal it.

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts, may be paid to persons authorized to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorized to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much

as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorized to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

Borough Bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council.

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge, but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

(4.) The council, with the consent of the Treasury, may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed.

Loans for Municipal Buildings.

120. The council of a borough may borrow money from the Public Works Loan Commissioners for the purpose of building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorized to build, and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public

Works Loans Act, 1875, or any amendment thereof, in such manner and form as the Commissioners direct.

Advowsons and similar Rights.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the Treasury.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment, not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right,

if not sold before the commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Government securities, and the income thereof shall go to the borough fund; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate.

Special Rates.

123. Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely, or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

Misapplication of Corporate Property.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognisance, or

judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, byelaw, or other proceeding of a council, purporting to direct or authorize any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorizes or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, notwithstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the court directs, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating

the payment by the returning officer or otherwise of expenses relating to parliamentary elections.

Transitory Provisions.

125.—(1.) In the several cases following:

(a.) Where before the fifteenth of May one thousand eight hundred and sixty the Treasury on approving of a mortgage of corporate land had required a sinking fund in names of trustees;

(b.) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities in which the same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid;

(c.) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees;

The Treasury, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the Treasury for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The Treasury may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for, arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by this Act, this Act shall, if the Treasury so direct, be substituted in the title of the account for that Act.

126. Where in a borough any mortgage debt had been before the fifteenth of May one thousand eight hundred and sixty incurred, for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may

submit to the Treasury any scheme for the discharge thereof by instalments, or a sinking fund, or both, extending over any term of years, and if the Treasury approve of the scheme, the sums required for discharge of the debt as proposed therein shall by virtue of this Act become charged on all or any part of the corporate land, or the borough fund, or borough rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the Treasury direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years, shall apply for discharge of the debt.

127. Where in a borough debts had from time to time, before the fifteenth of May one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may, with the consent of the Treasury, and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing, consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the Treasury direct.

128. Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date.

129. Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt contracted before the commencement of this Act or any interest thereon.

130. It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues or any part thereof were or was applicable before the passing of that Act,

to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due, until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorized by this Act shall be subject to the payment of any lawful debt due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

(3.) Money borrowed by a council for the purpose of being applied, and applied, in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

132. Nothing in this Act shall make liable to the payment of any debt contracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same.

PART VI.

CHARITABLE AND OTHER TRUSTS AND POWERS.

Charitable Trusts.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the

members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance.

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales.

Special Trusts and Powers.

134. The municipal corporation of a borough shall be trustees for executing by the council the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees before the first election of councillors in the borough under the Municipal Corporations Act, 1835.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class, or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees

jointly with other trustees for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees thereof, by any statute, charter, byelaw, or custom, before the passing of the Municipal Corporations Act, 1835, was or were, lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made, (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year,) shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it.

Local Acts.

136.—(1.) The trustees appointed or acting by or under any local Act of Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act.

(2.) The transfer shall be made in writing under the common seal of the trustees if they

are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorized to be levied for lighting.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the Schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a court of quarter sessions, which did not relate to the business of a court of criminal or civil judicature, if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

PART VII.

BOROUGH FUND: BOROUGH RATE: COUNTY RATE.

Borough Fund.

139. The rents and profits of all corporate land, and the interest, dividends, and annual proceeds of all money, dues, chattels, and valuable securities belonging or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund.

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order.

(3.) No other payment shall be made out of the borough fund, except—

- (a.) Under the authority of an Act of Parliament; or
- (b.) By order of the council; or
- (c.) By order of the court of quarter sessions for the borough; or
- (d.) By order of a justice in pursuance of this Act; or
- (e.) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county.

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorized by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise.

141.—(1.) An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk.

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer.

(2.) All payments to the treasurer shall go to the borough fund.

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough.

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed.

Borough Rate.

144.—(1.) If the borough fund is insufficient for the purposes to which it is applicable under this Act or otherwise by law, the council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes.

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough.

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate.

(4.) The council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate.

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the

overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may direct any person to take copies of or extracts from such books being in his hands, without having the same brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be made out by the clerk to the commissioners of each district.

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be charged; but no such entry shall in any case be made unless fourteen days previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish.

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just.

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognizance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council, or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make under this section, within a reasonable time after his receipt of the order

to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied off the goods of them or any of them, by distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough.

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part.

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate.

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning non-payment of contribution to a borough rate.

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in the like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate; and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates.

(5.) If any balance is found in the hands of any such overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor

within seven days after the balance is found, the auditor shall proceed to recover it.

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

147. Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section four of The Poor Rate Assessment and Collection Act, 1869, an order, as in that section provided, to the effect that the owners, instead of the occupiers, of such rateable hereditaments, as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

148. Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

149. All sums levied in pursuance of the borough rate shall go to the borough fund; and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable under this Act, or otherwise by law; and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

County Rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided, every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county.

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions.

151. The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such sums, if any, as are expended out of the county rate of the county in which the borough is situate, and as are not otherwise paid or chargeable, in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of all offenders committed for trial from the borough to the assizes for the county.

152.—(1.) If the whole or any part of the area for the time being comprised in a borough having a separate court of quarter sessions was, before the eleventh of July one thousand eight hundred and thirty-two, chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed.

(2.) General county purposes shall not include the costs arising out of coroners inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875, in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account showing separately—

(a.) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county; and

(b.) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received;

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges.

(4.) If any difference arises concerning the account, it shall be decided by the arbitration of a barrister, named, on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

PART VIII.

ADMINISTRATION OF JUSTICE.

County Justices.

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county.

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exercisable out of quarter sessions, of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.

Borough Justices.

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor.

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice.

156. It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace.

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.

(2.) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(3.) He must, while acting as such, reside in or within seven miles of the borough, or occupy a house, warehouse, or other property in the borough.

(4.) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate.

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate.

159.—(1.) The justices for a borough shall

from time to time appoint a fit person to be their clerk, to be removeable at their pleasure.

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August one thousand eight hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices.

160.—(1.) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices room, with offices, for the business of the borough justices.

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

Stipendiary Magistrate.

161.—(1.) If the council desire the appointment of a stipendiary magistrate for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years standing.

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

Borough Quarter Sessions: Recorder: Clerk of the Peace.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.

(4.) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years standing to be recorder of the borough.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made, as Her Majesty directs; but the same may at any time be increased by resolution of the Council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.

(8.) A person may be appointed recorder of two or more boroughs conjointly.

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

(2.) The clerk of the peace shall hold office during good behaviour.

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled.

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements as he thinks proper, and any such table shall be of no validity until it is so confirmed.

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.

(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognisance of all crimes, offences, and matters cognisable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts.

(4.) But the recorder shall not, by virtue of his office, have power

(a.) To allow, apportion, make, or levy any borough rate; or

(b.) Subject to the provisions of this Act respecting appeals from a rate, to do any act in relation to the allowance, apportionment, making, or levying of any rate whatsoever; or

(c.) To grant any licence or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail; or

(d.) To exercise any power by this Act specially vested in the council.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

(2.) But nothing in this section shall authorize the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced.

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace, shall, on the request of the recorder, appoint an assistant, and the recorder

shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(a.) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised; and

(b.) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

(7.) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

(8.) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder.

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

169. A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony. The amount of those costs and expenses shall be ascertained as directed by law, and the order of the court for the payment thereof shall be directed to the treasurer of the borough.

Sheriff.

170.—(1.) The council of every borough being a county of itself, and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff.

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the

office of sheriff in the respective borough or city would have had if this Act had not been passed.

Coroner.

171.—(1.) The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner.

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

172.—(1.) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise.

(2.) The mayor or two justices for the borough shall on each occasion certify by writing signed by him or them the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

173. On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was called upon to hold an inquest during the year ending on the then last thirty-first of December.

174.—(1.) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner.

(2.) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

Borough Civil Court.

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.

(2.) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise.

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

(5.) The recorder, where judge, and the deputy judge, shall have such remuneration as the council fix by byelaw.

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

176. Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer.

177. Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

178.—(1.) Except where the town clerk acts

as registrar, the council shall from time to time appoint a registrar of the borough civil court.

(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be from time to time fixed by the council, subject to the approval of the Secretary of State.

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs.

181. Every personal action brought in a borough civil court shall be commenced by writ of summons.

182.—(1.) Subject to the provisions of this Act, the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder

is judge, or wherein a barrister of five years standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question, shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed.

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

185. It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

Borough Juries.

186.—(1.) Every Burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, sum-

mon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of persons, qualified and liable, to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court), be liable to pay a fine of such amount as the court thinks fit.

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorized by the court to receive it, the court may, then or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed the fine, and the reasonable charges of the distress and sale.

(9.) Nothing in this Act shall affect the Juries Act, 1870.

Exceptional Provisions.

187. The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission.

188.—(1.) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town, all bills of indictment for offences committed

within that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorized by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate the trial of causes, "indictments, and other proceedings which "arise within the counties of certain cities "and towns corporate within the kingdom."

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

189. Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognisable by a justice or by the quarter sessions having jurisdiction within that place shall be cognisable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

PART IX.

POLICE.

Watch Committee; Constables.

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one third of their own body, who, with the mayor, shall be the watch committee.

(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables.

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constableness, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act.

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

(6.) Nothing in this section shall interfere with the operation of an Act of the session of the third and fourth years of Her Majesty's reign "to amend the Act for the establishment of county and district constables"; and throughout that Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

192. The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

193. A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house, in order that he may either be secured until he can be brought before a justice, or, where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice.

194. If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office.

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable

on summary conviction to a fine not exceeding five pounds.

(2.) But nothing in this section shall prevent any prosecution by way of indictment against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence.

Special Constables.

196.—(1.) Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.

(2.) Every such special constable shall make a declaration to the effect of the oath set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, "for amending the laws" relative to the appointment of special constables, and for the better preservation of "the peace," and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

Watch Rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate.

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable

annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rentcharge (if any), being paid by the tenant.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount, in the discretion of the council, not exceeding in any year eightpence in the pound on the net annual value of the hereditaments rated thereto.

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits.

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners, instead of occupiers, shall extend to the watch rate.

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by Part X., or make the borough fund liable to any expenses with which it would not be otherwise chargeable.

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate.

(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but shall make a separate rate or assessment on the part or parts only of the

parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate.

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually acting in and for the borough and has been published, as a poor rate is by law required to be allowed and published.

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in cases of appeal against a poor rate.

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council, but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands, they shall pay it to the treasurer, to go to the borough fund, to the credit of the place for which the rate was made, and in part payment of the next watch rate laid on that place by the council.

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom; and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by distress and sale of the offender's goods, rendering to him the overplus; and in default of such distress two justices may commit him to prison, there to remain without bail until payment of the amount and arrearages.

199. Any warrant required for the levy or collection of a watch rate or separate rate may be issued by the mayor, signed by him and sealed with the corporate seal.

200. All money raised by a watch rate, or by a separate rate as last aforesaid, shall go to the borough fund.

PART X.

FREEMEN.

201. In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses.

202. No person shall be admitted a freeman by gift or by purchase.

203. The town clerk of every borough for which at the commencement of this Act there is a Freeman's Roll shall continue to keep a list, called the Freeman's Roll.

204. Where a person is entitled to be admitted a freeman for the purposes of this Part in respect of birth, servitude, or marriage, and claims accordingly, the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the Freeman's Roll.

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

(2.) Every person who for the time being is—

- (a.) An inhabitant of a borough, or
- (b.) Wife, widow, son; or daughter of a freeman, or
- (c.) Husband of a daughter or widow of a freeman, or
- (d.) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the fifth of June one thousand eight hundred and thirty-five were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, byelaw, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or she shall not have any benefit in respect of those rights until he or she has paid that fine, fee, or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act.

207. Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or for the use or benefit of any borough or body corporate.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman, or member.

209.—(1.) Every person who, if the Muni-

cipal Corporations Act, 1835, had not been passed, would have enjoyed as a freeman, or might thereafter have acquired, in respect of birth or servitude, as a freeman, the right of voting in a parliamentary election, shall be entitled to enjoy or acquire that right as if that Act or this Act had not been passed.

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough.

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections.

PART XI.

GRANT OF CHARTERS.

210. If on the petition to the Queen of the inhabitant householders of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporation Act.

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the London Gazette, and otherwise in such manner as the Committee direct for the purpose of making it known to all persons interested.

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporation Acts to a municipal borough it shall be lawful for Her Majesty, by the charter, to do all or any of the following things:

- (a.) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward; and
- (b.) To fix the years days and times for the retirement of the first aldermen and councillors; and
- (c.) To fix such days times and places, and nominate such persons to perform such

duties, and make such other temporary modifications of the Municipal Corporations Acts, as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

(2.) The years days times and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in the charter, be respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorized by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter; and, where the first mayor aldermen and councillors or any of them are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporation Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition total or partial of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to

the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

(3.) The scheme, when settled by the Committee of Council, shall be published in the London Gazette, and shall not be of any effect unless confirmed as herein-after mentioned.

(4.) Where, within one month after the publication of the scheme in the London Gazette, a petition against it by any local authority affected thereby, or by not less than one twentieth of the owners and ratepayers of the borough (such twentieth to be one twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority, (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts,) also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, and not being a school board, and having powers of local government and of rating for public purposes.

(7.) The district of a local authority for the purposes of this section means the area

within which such authority can exercise any powers or rights.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861, to the Board of Trade.

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.

(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly.

215. Nothing in any scheme or in the Municipal Corporation Acts shall authorize the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty thousand inhabitants or upwards, according to the census taken next before the date of the incorporation.

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative and shall not be questioned in any legal proceeding whatever.

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

217. Where a charter was granted to a borough within seven years before the fourteenth of August one thousand eight hundred and seventy-seven, the Committee of Council, on the petition to the Queen of the council of

the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications; and if within one month after the publication of the scheme in the London Gazette a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament.

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

PART XII.

LEGAL PROCEEDINGS.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence.

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this

Act may appeal therefrom to a court of quarter sessions.

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by certiorari or otherwise into the High Court.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough.

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

- (a.) Directs payment thereof to the informer or to any person aggrieved; or
- (b.) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund; or
- (c.) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant, may, if issued by a justice for a borough, be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles from the borough, and, within those limits, shall have the same

effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

224.—(1.) An action to recover a fine from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough, and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose.

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not being qualified in respect of estate, it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff.

225.—(1.) An application for an information in the nature of a quo-warranto against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.

(2.) In the case of such an application, or of an application for a mandamus to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit,

make the rule for the information or mandamus absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of mandamus issued shall be peremptory in the first instance.

226.—(1.) An action, prosecution, or proceeding against any person for any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act, shall not lie or be instituted unless it is commenced within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof.

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent, or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

227.—(1.) Where a person charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough, at any time (by day or night) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in

the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.

(6.) The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

PART XIII.

GENERAL.

Boundaries.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed.

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any

such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, dépôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs

of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by warrant of the council and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

Time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Distance.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

Notices.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Inspection and Copies.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom.

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money.

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the rate-payers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freeman's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy.

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned,—

(a.) Obstructs any person authorized to inspect the same in making such inspection thereof as in this section mentioned; or

(b.) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

Fees.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorized to be taken by the clerk of the peace (if any) for the borough, by the clerk to the justices (if any) for the borough, and by the registrar and officers of the borough civil court (if any), to be posted conspicuously in the following places:

(a.) The room where the business of the town clerk's office is transacted;

(b.) The room, if any, where the justices of the borough sit for transacting their business;

(c.) The room, if any, where the court of quarter sessions of the borough is held; and

(d.) The room, if any, where the borough civil court is held.

Seals and Signatures.

235. If any person forges the seal or signature affixed or subscribed to a byelaw made

under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

Applications to Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act notice of the intention to make the application shall be fixed on the town hall one month at least before the application, and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection.

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

Deputy.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts.

Overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers may be lawfully done by the major part of them.

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

Declarations and Oaths.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

Forms.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law.

Misnomer or Inaccurate Description.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood.

Substitution in former Acts.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connexion therewith, such provision of this Act as is also mentioned in connexion therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedule, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves, the mayor shall be the returning officer at parliamentary elections; but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary

borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

Disfranchised Parliamentary Boroughs.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, cease to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

Licensing.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act.

Freedom of Trading.

247. Notwithstanding any custom or bylaw, every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend to the non-corporate members and liberties thereof, and to such corporate members thereof as have not a separate court of quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and

throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licenses or authorities to persons to keep inns, alehouses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace.

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs, with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs.

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited.

Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-

Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice.

Savings.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorized by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

251. Nothing in this Act shall alter the effect of any local Act of Parliament.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall

affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports.

257. Nothing in this Act shall—

- (1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters, and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or
- (2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those Universities respectively; or
- (3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those Universities; or
- (4.) Compel any resident member of either of

those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or

- (5.) Authorize the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or
- (6.) Authorize the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or
- (7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative; and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exercisable by Her Majesty by virtue of her royal prerogative.

260.—(1.) The repeal effected by this Act shall not affect—

- (a.) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or
- (b.) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or
- (c.) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or
- (d.) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or
- (e.) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

- (f.) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation, disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or
- (g.) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.
- (2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal or other charter, grant, letters patent, byelaw, jurisdiction, office, right, title, claim, privilege, liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.
- (3.) All elections, declarations, appointments, byelaws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SCHEDULES.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

PART I.

Enactments repealed generally.

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| <p>5 & 6 Will. 4. c. 76. -</p> <p>6 & 7 Will. 4. c. 77. -</p> <p style="padding-left: 20px;">in part.</p>
<p>6 & 7 Will. 4. c. 103. -</p> <p style="padding-left: 20px;">in part.</p> <p>6 & 7 Will. 4. c. 104. -</p> <p>6 & 7 Will. 4. c. 105. -</p> <p>7 Will. 4. & 1 Vict. c. 78.</p> <p>7 Will. 4. & 1 Vict. c. 81.</p> <p>1 & 2 Vict. c. 31. -</p> <p>1 & 2 Vict. c. 35. -</p>
<p>2 & 3 Vict. c. 27. -</p> <p>2 & 3 Vict. c. 28. -</p> <p>3 & 4 Vict. c. 28. -</p> <p>4 & 5 Vict. c. 48. -</p> | <p>The Municipal Corporations Act, 1835.</p> <p>An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage;</p> <p style="padding-left: 20px;">in part, namely,—</p> <p style="padding-left: 40px;">section twenty-six.</p> <p>The Municipal Corporation (Boundaries) Act, 1836 ;</p> <p style="padding-left: 40px;">except section six (Berwick).</p> <p>The Municipal Corporation (Borough Fund) Act, 1836.</p> <p>The Municipal Corporation (Justices, &c.) Act, 1836.</p> <p>The Municipal Corporation (General) Act, 1837.</p>
<p>The Municipal Corporation (Watch Rate) Act, 1837.</p>
<p>The Municipal Corporation (Benefices) Act, 1838.</p> <p>An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.</p> <p>The Municipal Corporation (Borough Courts) Act, 1839.</p> <p>The Municipal Corporation (Watch Rate) Act, 1839.</p> <p>The Municipal Corporation (Watch Rate) Act, 1840.</p> <p>An Act to render certain municipal corporations rateable to the relief of the poor in certain cases.</p> |
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- 6 & 7 Vict. c. 89. - The Municipal Corporation Act, 1843.
- 8 & 9 Vict. c. 110. - The Municipal Corporation (Rates) Act, 1845.
- 11 & 12 Vict. c. 93. - An Act to confirm the incorporation of certain boroughs.
- 12 & 13 Vict. c. 65. - An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
- 12 & 13 Vict. c. 82. - An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure;
in part,
in part, namely,—
section one.
- 13 & 14 Vict. c. 42. - The Municipal Corporation (Incorporation) Act, 1850.
- 13 & 14 Vict. c. 64. - The Municipal Corporation (Bridges) Act, 1850.
- 13 & 14 Vict. c. 91. - The Municipal Corporation (Justices) Act, 1850;
in part,
in part, namely,—
section nine.
- 13 & 14 Vict. c. 101. - An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund; and to make certain amendments in the laws for the relief of the poor;
in part, namely,—
section ten.
- 15 & 16 Vict. c. 81. - An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales;
in part, namely,—
section thirty-eight.
- 16 & 17 Vict. c. 79. - The Municipal Corporation Act, 1853.
- 16 & 17 Vict. c. 137. - The Charitable Trusts Act, 1853;
in part, namely,—
section sixty-five.
- 20 & 21 Vict. c. 50. - The Municipal Corporation Act, 1857.
- 21 & 22 Vict. c. 43. - An Act to amend the municipal franchise in certain cases.
- 22 Vict. c. 35. - The Municipal Corporation Act, 1859.
- 22 & 23 Vict. c. 32. - An Act to amend the law concerning the police in counties and boroughs in England and Wales;
in part, namely,—
sections five and six.
- 24 & 25 Vict. c. 75. - The Municipal Corporations Acts Amendment Act, 1861.
- 31 & 32 Vict. c. 41. - The Borough Electors Act, 1868.
- 32 & 33 Vict. c. 23. - The Municipal Corporation (Recorders) Act, 1869.
- 32 & 33 Vict. c. 55. - The Municipal Corporation (Election) Act, 1869.
- 32 & 33 Vict. c. 62. - The Debtors Act, 1869;
in part, namely,—
section twenty-one.
- 34 & 35 Vict. c. 67. - The Municipal Corporations Act, 1859, Amendment Act.
- 35 & 36 Vict. c. 33. - The Ballot Act, 1872;
in part, namely,—
sections twenty and twenty-one.
- 35 & 36 Vict. c. 60. - The Corrupt Practices (Municipal Elections) Act, 1872.
- 36 & 37 Vict. c. 33. - The Municipal Corporations Evidence Act, 1873.
- 37 & 38 Vict. c. 59. - The Working Men's Dwellings Act, 1874.
- 38 & 39 Vict. c. 40. - The Municipal Elections Act, 1875.
- 39 & 40 Vict. c. 61. - The Divided Parishes and Poor Law Amendment Act, 1876;
in part, namely,—
section thirty.
- 40 & 41 Vict. c. 69. - The Municipal Corporations (New Charters) Act, 1877.
- 41 & 42 Vict. c. 26. - The Parliamentary and Municipal Registration Act, 1878;
in part, namely,—
sections twenty, thirty-four, and forty-one.

PART II.

Enactments repealed only as to Boroughs within this Act.

- | | | |
|--------------------------------|---|---|
| 3 Edw. 1. c. 6.
in part. | - | The Statutes of Westminster, the first. Amerciements shall be reasonable;
in part, namely,—
as far as it relates to a city, borough, or town. |
| 3 Edw. 1. c. 31.
in part. | - | The Statutes of Westminster, the first. Excessive toll in markettown.
Murage;
in part, namely,—
from "Touching citizens" to "the King," inclusive. |
| 15 Rich. 2. c. 5.
in part. | - | St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilda, fraternities, offices, commonalties; or to their use;
in part, namely,—
as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty. |
| 2 & 3 Phil. & Mary
c. 18. | | An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves. |
| 7 Jas. 1. c. 5. -
in part. | - | An Acte for ease in pleading against troublesome and contentious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawful execution of their office;
in part, namely,—
as far as it relates to mayors of cities or towns corporate. |
| 21 Jas. 1. c. 12.
in part. | - | An Acte for ease in pleading against troublesome and contentious suites;
in part, namely,—
section three, as far as it relates to mayors of cities or towns corporate. |
| 11 Geo. 1. c. 4. | - | An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made. |
| 12 Geo. 3. c. 21. | - | An Act for giving relief in proceedings upon writs of mandamus for the admission of freemen into corporations and for other purposes therein mentioned. |
| 32 Geo. 3. c. 58. | - | An Act for the amendment of the law in proceedings upon information in nature of quo warranto. |
| 55 Geo. 3. c. 51. | - | An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates. |
| 57 Geo. 3. c. 91. | - | An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales. |
| 2 & 3 Will. 4. c. 69. | - | An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament. |
| 3 & 4 Will. 4. c. 31. | - | An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceding or on the Monday next ensuing. |
| 4 & 5 Will. 4. c. 27. | - | An Act for the better administration of justice in certain boroughs and franchises. |
| 7 Will. 4. & 1 Vict.
c. 19. | | An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases. |
| 5 & 6 Vict. c. 104. | - | The Municipal Corporation Act, 1842. |
| 15 & 16 Vict. c. 5. | - | The Municipal Corporation Act, 1852. |

23 & 24 Vict. c. 16.	-	The Municipal Corporation (Mortgages, &c.) Act, 1860.
23 & 24 Vict. c. 51.	-	The Local Taxation Returns Act, 1860 ;
in part.		in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
23 & 24 Vict. c. 106.	-	The Lands Clauses Consolidation Acts Amendment Act, 1860 ;
in part.		in part, namely,— section six.
38 & 39 Vict. c. 89.	-	The Public Works Loans Act, 1875 ;
in part.		in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
39 & 40 Vict. c. 20.	-	The Statute Law Revision Act (Substituted Enactments) Act, 1876 ;
in part.		in part, namely,— section three.
40 & 41 Vict. c. 17.	-	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
40 & 41 Vict. c. 66.	-	The Local Taxation Returns Act, 1877 ;
in part.		in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
42 & 43 Vict. c. 30.	-	The sale of Food and Drugs Act, Amendment Act, 1879 ;
in part.		in part, namely,— section eight.
43 Vict. c. 17.	-	The Town Councils and Local Boards Act, 1880.

THE SECOND SCHEDULE.

MEETINGS AND PROCEEDINGS OF COUNCIL.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

2. The quarterly meetings shall be held at noon on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide or afterwards from time to time by standing order determine.

3. The mayor may at any time call a meeting of the council.

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall. Where the meeting is called by members of the council, the notice

shall specify the business proposed to be transacted thereat.

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left or delivered by post in a registered letter at the usual place of abode of every member of the council, three clear days at least before the meeting.

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

10. All acts of the council, and all questions

coming or arising before the council, may be done and decided by the majority of such members of the council as are present and vote at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one third of the number of the whole council.

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorized by this Act.

13. Subject to the foregoing provisions of this Schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

THE THIRD SCHEDULE.

ELECTIONS.

PART I.

Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.

1. On or before each first of September, the overseers of each parish shall make, sign, and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish.

2. The overseers shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall, and to be kept so fixed during the last seven of those fifteen days.

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk.

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list.

6. Every person so objecting (in this Act referred to as an objector) shall, on or before the fifteenth of September, give to the town clerk, and also give to the person objected to, or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof to be fixed on the town hall, and to be kept so fixed during the last seven days of September.

8. He shall also keep a printed copy of each of these lists, open to public inspection on any day during the same seven days.

9. The mayor and the two revising assessors shall in each year revise the parish burgess lists.

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

11. They shall give three clear days notice of the holding of the court, by notice fixed on the town hall.

12. The town clerk shall at the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled.

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears, the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list.

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote.

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with respect to the name or abode of any person, or the description of any property.

20. The overseers, vestry clerks, and collectors

tes of every parish shall attend the

art may require any overseer or the custody of any book con-
rate made in any year in any
the same at the court for

examine on oath the town
clerks, and collectors,
ector, respondent, or

e hearing in open
lity of all claims

, in open court, write
each name inserted or
against any part of the lists in
ake has been corrected or omission
, and shall sign his name to every
e of the lists so revised.

25. The mayor may adjourn the court from
time to time, so that no adjourned court be
held after the fifteenth of October.

PART II.

Rules as to Nomination in Elections of Councillors.

1. Every candidate for the office of councillor
must be nominated in writing.

2. The writing must be subscribed by two
burgesses of the borough or, in the case of a
ward election, of the ward, as proposer and
seconder, and by eight other burgesses of the
borough or ward, as assenting to the nomina-
tion.

3. Each candidate must be nominated by a
separate nomination paper, but the same
burgesses, or any of them, may subscribe as
many nomination papers as there are vacancies
to be filled, but no more.

4. Each person nominated must be enrolled
in the burgess roll or entered in the separate
non-resident list required by this Act to be
made.

5. The nomination paper must state the
surname and other names of the candidate,
with his abode and description.

6. The town clerk shall provide nomination
papers, and shall supply any burgess with as
many nomination papers as may be required,
and shall, at the request of any burgess, fill up
a nomination paper.

7. Every nomination paper subscribed as
aforesaid must be delivered by the candidate,
or his proposer or seconder, at the town clerk's
office, seven days at least before the day of
election, and before five o'clock in the after-

noon of the last day for delivery of nomination
papers.

8. The town clerk shall forthwith send notice
of every such nomination to each candidate.

9. The mayor shall attend at the town hall
on the day next after the last day for delivery
of nomination papers for a sufficient time,
between the hours of two and four in the after-
noon, and shall decide on the validity of every
objection made in writing to a nomination
paper.

10. Where a person subscribes more nomina-
tion papers than one, his subscription shall be
inoperative in all but the one which is first
delivered.

11. Each candidate may, by writing signed
by him, or, if he is absent from the United
Kingdom, then his proposer or seconder may,
by writing signed by him, appoint a person (in
this schedule referred to as the candidate's
representative) to attend the proceedings
before the mayor on behalf of the candidate,
and this appointment must be delivered to the
town clerk before five o'clock in the afternoon
of the last day for delivery of nomination
papers.

12. Each candidate and his representative,
but no other person, except for the purpose of
assisting the mayor, shall be entitled to attend
the proceedings before the mayor.

13. Each candidate and his representative
may, during the time appointed for the
attendance of the mayor for the purposes of
this schedule, object to the nomination paper
of any other candidate for the borough or
ward.

14. The decision of the mayor shall be given
in writing, and shall, if disallowing an objec-
tion, be final, but, if allowing an objection,
shall be subject to reversal on petition
questioning the election or return.

15. The town clerk shall at least four days
before the day of election cause the surnames
and other names of all persons validly
nominated, with their respective abodes and
descriptions, and the names of the persons
subscribing their nomination papers as pro-
posers and seconders, to be printed and fixed
on the town hall, and in the case of a ward
election, in some conspicuous place in the
ward.

16. The nomination of a person absent from
the United Kingdom shall be void, unless his
written consent given within one month before
the day of his nomination in the presence of
two witnesses is produced at the time of his
nomination.

17. Where the number of valid nominations
exceeds that of the vacancies, any candidate may

withdraw from his candidature by notice signed by him, and delivered at the town clerk's office not later than two o'clock in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed.

PART III.

Modifications of the Ballot Act in its Application to Municipal Elections.

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and Rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation and furnish each presiding officer with such number of ballot papers, as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the clerk of the Crown in Chancery.

PART IV.

Enactments which are to revive on the Expiration of the Ballot Act.

With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed:

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for whom he votes, with their abodes and descriptions. The voting paper must be signed by the burgess, and must state the qualifying property in respect of which he votes.

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as [A.B.] to the voting paper now delivered in by you?"

The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

THE FOURTH SCHEDULE.

FEES AND REMUNERATION.

The following fees and remuneration shall be payable:—

1. *Commissioner for Division into Wards or Alteration of Wards.*

Five guineas for every day he is employed, over and above his travelling and other expenses.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions.*

For every day not exceeding two, or, by resolution of the council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder	-	Ten guineas.
To an assistant clerk of the peace	-	Two guineas.
To an additional crier	-	Half-a-guinea.

The remuneration is payable on a certificate from the recorder showing the amount due.

3. *Coroner.*

To the borough coroner (subject to the provisions of any other Act relating to coroners)—

For every inquisition which he duly takes in the borough - - - Twenty shillings.

and

For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition - Ninepence.

4. *Special Constables.*

To a special constable, for every day during which he is called out to act as such } Three shillings and sixpence.

THE FIFTH SCHEDULE.

PAYMENTS OUT OF THE BOROUGH FUND.

PART I.

Payments which may be made without Order.

1. The remuneration (if any) of the mayor, of the recorder (if any) in his capacity either of recorder or of judge of a borough civil court, of the stipendiary magistrate (if any), of the town clerk, of the treasurer, of the clerk of the peace when paid by salary, of every other officer appointed by the council, and of the clerk to the justices.

2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition.

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier.

PART II.

Payments which may not be made without Order.

1. The expenses incurred by overseers, and by the town clerk and other municipal authorities, in relation to the enrolment of burgesses and the holding of municipal elections, or so

much of those expenses as is not otherwise provided for under section thirty of the Parliamentary and Municipal Registration Act, 1878.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justices room (if any), and the necessary expenses of that room.

4. The fees payable to the clerk of the peace if not paid by salary, and under this Act to the borough coroner.

5. The payments to be made under this Act to or in respect of the borough police and to any special constable, including the following payments (namely);

(a.) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council, direct; and

(b.) Such further sum as may be awarded by the watch committee, subject to the approbation of the council, or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, or as may be awarded by the watch committee, sub-

ject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury, or worn out by length of service; and

(c.) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders, and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(d.) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders.

7. All sums payable under this Act by the

corporation of the borough to the treasurer of a county.

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration.

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable.

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all election acts and proceedings under the charter.

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect.

THE SIXTH SCHEDULE.

COUNTIES TO WHICH CERTAIN BOROUGHES ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed	-	-	-	Northumberland.
Bristol	-	-	-	Gloucestershire.
Chester	-	-	-	Cheshire.
Exeter	-	-	-	Devonshire.
Kingston-upon-Hull	-	-	-	Yorkshire.
Newcastle-upon-Tyne	-	-	-	Northumberland.

THE SEVENTH SCHEDULE.

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the London Gazette, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of

Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the

scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

THE EIGHTH SCHEDULE.

FORMS.

Part I.—Declarations on accepting Office.

FORM A.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, A.B., having been elected mayor [or alderman, councillor, elective auditor, or revising assessor] for the borough of , hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [and in the case of the person being qualified by estate say, And I

hereby declare that I am seised or possessed of real or personal estate, or both [as the case may be], to the value or amount of one thousand pounds, or five hundred pounds [as the case may require], over and above what will satisfy my just debts].

FORM B.

DECLARATION BY RECORDER OR BOROUGH JUSTICE.

I, A.B., hereby declare that I will faithfully and impartially execute the office of recorder [or justice of the peace] for the borough of according to the best of my judgment and ability.

Part II.—Forms relating to Elections.

FORM C.

THE LIST OF BURGESSES of the Borough of

in the Parish [or Township] of .

Surname and other Names of each Person in full.	Nature of Property for which he is now rated.	Name and Situation of Property for which he is now rated.
Ashton, John - -	Shop - -	No. 23, Church Street.
Bates, Thomas - -	House - -	Brook's Farm.

(Signed) A.B. }
C.D. } Overseers.

FORM D.

NOTICE OF CLAIM.

To the Town Clerk of the Borough of .

I HEREBY give you notice, that I claim to have my name inserted in the parish burgess lists of the borough of that I occupy [here describe the house, warehouse, counting-house, shop, or other building then occupied by the claimant] in the borough, and that I have been rated in the parish of [here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification].

Dated the

day of

in the year

(Signed) John Allen of [place of abode].

FORM E.

NOTICE OF OBJECTION.

To the Town Clerk of the Borough of _____ [or to the person objected to as the case may be].

I HEREBY give you notice, that I object to the name of Thomas Bates of Brook's Farm, in the parish of _____ [describe the person objected to as described in the parish burgess list], being retained on the parish burgess lists of the borough of _____

Dated the _____ day of _____ in the year _____
 (Signed) John Ashton of [here state the place of abode and the property for which he is said to be rated in the parish burgess lists].

FORM F.

LIST OF CLAIMANTS.

The following Persons claim to have their Names inserted in the Parish Burgess Lists of the Borough of _____

Surname and other Names of each Claimant.	Nature of Property for which he is now rated.	Situation of Property for which he is now rated.	Parish [or Parishes] in which he has been rated, as stated in the Claim.
Allen, John - -	House - -	No. 17, High Street.	Rated in the last year in Saint Mary's parish in the borough, and in the two preceding years in Saint James's parish in the borough.

(Signed) A.B., Town Clerk

FORM G.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained in the Parish Burgess Lists of the Borough of _____

Surname and other Names of each Person objected to.	Nature of Property for which he is now rated.	Situation of Property for which he is said to be now rated in the Overseers List.	Parish in which is the Property for which he is now said to be rated in the Overseers List.
Bates, Thomas -	House -	Brook's Farm - -	Saint James'.

(Signed) A.B., Town Clerk

FORM H.

NOTICE.

Borough of . Election of
[Councillors, or elective Auditors, or
revising Assessors, as the case may be] for
the [Ward or several Wards
of the] Borough.

Take Notice.

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [Ward or several wards of the] said borough will be held on the day of

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination.

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.)

4. Each candidate must be nominated by a

separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [or ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of 18 .
A.B., Town Clerk.

FORM I.

NOMINATION PAPER.

Borough of . Election of Councillors, [elective Auditors, or revising Assessors]
for Ward in the said Borough [or the said Borough] to be held on the
day of 18 .

We, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other Names.	Abode.	Description.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

We, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this

day of

18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

FORM K.

BALLOT PAPER.

FORM of Front of Ballot Paper.

For Elective Auditors.

Counterfoil.
No.

Note.—The counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	CADE. (John Cade, of 22, Welclose Place, Accountant.)	
2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)	
3	THOMPSON. (William Thompson, of 14, Queen Street, Silversmith.)	

For Revising Assessor.

1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	BYRON. (James Byron, of 45, George Street, Commission Agent.)	
3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

FORM of Back of Ballot Paper.

No. . Election of elective auditors [or revising assessors] for the borough of
be held on the day of 18 .
The number on the back of the ballot paper is to correspond with that on the counterfoil.

Part III.—Forms relating to Working Men's Dwellings.

FORM L.

FORM OF GRANT BY CORPORATION.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of Grant No.
The mayor, aldermen, and burgesses of the
borough of by virtue and in pur-
suance of the above-mentioned Act, and in
consideration of paid to them by
A.B. of hereby grant to the said
A.B. (herein referred to as the grantee), and
his heirs, the site following (that is to say)
[insert description] with the appurtenances,
subject to the following conditions (that is to
say):

1. The grantee shall build on the site one
working man's or working men's dwelling
(and no more) according to the plan and
specification deposited in the office of the
town clerk, numbered, and under the
superintendence and to the satisfaction of the
corporation.

2. The grantee, his heirs and assigns, shall
always maintain and repair the building, and
shall not sell or alienate the site or building
in divisions or separate parts, and, in case of
the taking down or destruction of the building
shall not rebuild it except in manner approved
by the corporation.

3. The grantee, his heirs or assigns, shall
not add to or alter the character of the build-
ing without the consent of the corporation.

4. If at any time the grantee, his heirs or
assigns, fail to fully observe and perform any
stipulation of this grant, the corporation may,
if they think fit, declare that the site is re-
vested in the corporation; and thereupon the
same, with the dwelling and other buildings
thereon, shall become and be vested in the
corporation, as if this grant had not been made.

In witness whereof, &c., this day of
187

(Corporate Seal.)

FORM M.

FORM OF TRANSFER OF GRANT.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of Transfer No.
(Grant No.)

A.B. of, by virtue and in pursu-
ance of the above-mentioned Act, and in
consideration of paid to him by C.D.
of, hereby grants and transfers to
the said C.D. and his heirs the site comprised
in the within-written* grant [or the grant

No. under the said Act, dated the day
of 187†] with the appurtenances
and with the dwelling and other buildings
thereon, subject to the conditions on which
that site is held immediately before the
execution of this transfer.

In witness whereof, &c., this day of
18

A.B. (L.S.)

* [In case of transfer by indorsement.]
† [In case of transfer by separate deed.]

FORM N.

FORM OF LEASE BY CORPORATION.

The Municipal Corporations Act, 1882.
(Working Men's Dwellings.)

Borough of Lease No.

The mayor, aldermen, and burgesses of the
borough of by virtue and in pur-
suance of the above-mentioned Act, and in
consideration of the sum of paid
to them by A.B. of and of the rent
and stipulations in this lease reserved and
contained, and to be by him, his executors,
administrators, or assigns, paid and performed
hereby lease to the said A.B. (herein referred
to as the lessee), his executors and adminis-
trators, the site following (that is to say)
[insert description] with the appurtenances, for
the term of [nine hundred and ninety-nine]
years from the day of, at the
yearly rent (clear of all deductions) of,
payable by two equal half-yearly payments on
the day of and the
day of in every year, the first thereof
to be made on the day of, and
the last thereof to be made in advance on the
day of next before the end
of the term, and so that on the term being
determined by re-entry a proportionate part of
the rent for the fraction of the current half
year up to re-entry be repayable.

And the lessee hereby covenants with the
corporation that he, his executors, adminis-
trators, or assigns, will during the term pay
the rent on the days and in manner aforesaid,
and will pay all taxes, rates, and outgoings for
the time being payable by the tenant in
respect of the premises.

And this lease is made subject to the
following conditions (that is to say):

1. The lessee shall build on the site one
working man's or working men's dwelling
(and no more) according to the plan and
specification deposited in the office of the town
clerk, and numbered, under the super-
intendence and to the satisfaction of the
corporation.

2. The lessee, his executors, administrators,
and assigns, shall always during the term

maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of 187 .

(Corporate Seal.)
A.B. (L.S.)

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. .
(Lease No. .)

A.B. of (herein referred to as the assignor) by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by C.D. of hereby assigns to the said C.D. (herein referred to as the assignee,) his executors and administrators, the site comprised in the within-written lease* [or the lease No. under the said Act, dated the day of 187 †], with the appurtenances, and with the dwelling and other buildings thereon, for the residue of the term of years, at the rent and subject to the stipulations and conditions at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors and administrators, covenants with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)
C.D. (L.S.)

* [In case of assignment of indorsement.]
† [In case of assignment by separate deed.]

Part IV.—Forms relating to Borough Bridges.

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of . Mortgage No. .
We, the mayor, aldermen, and burgesses of the borough of by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by A.B. of for the purposes of the said Act, do grant and assign unto the said A.B., his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said A.B., his executors, administrators, and assigns, from the day of the date hereof, until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of at [place of payment].
In witness whereof, &c., this day of 187 .

(Corporate Seal.)

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.
(Borough Bridges.)

Borough of . Transfer No. .
(Mortgage No. .)

I A.B. of in consideration of the sum of paid to me by C.D. of his executors, administrators, and assigns, do hereby transfer to the said C.D., a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of and interest thereon at per centum per annum [or, if the transfer is by indorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of 187 .

A.B. (L.S.)

THE NINTH SCHEDULE.

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict. c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (section 24).

5 & 6 Vict. c. 109.—An Act for the appointment of parish constables (section 21).

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).

10 & 11 Vict. c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (section 13).

12 & 13 Vict. c. 35.—An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (section 2).

12 & 13 Vict. c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict. c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (section 7).

13 & 14 Vict. c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (section 10).

14 & 15 Vict. c. 28.—An Act for the well-ordering of common lodging houses (section 2).

14 & 15 Vict. c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (section 2).

16 & 17 Vict. c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (section 24).

16 & 17 Vict. c. 97.—The Lunatic Asylums Act, 1853 (section 9).

17 & 18 Vict. c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

17 & 18 Vict. c. 87.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (section 3).

17 & 18 Vict. c. 105.—The Militia Law Amendment Act, 1854 (section 11).

18 & 19 Vict. c. 57.—An Act further to amend the laws relating to the militia in England (section 7).

18 & 19 Vict. c. 121.—The Nuisances Removal Act for England, 1855.

19 & 20 Vict. c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.

22 & 23 Vict. c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (section 25).

23 & 24 Vict. c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict. c. 61.—An Act for the better management of highways in England.

26 & 27 Vict. c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict. c. 97.—The Stipendiary Magistrates Act, 1863 (section 2).

28 & 29 Vict. c. 126.—The Prison Act, 1865 (section 4).

30 & 31 Vict. c. 102.—The Representation of the People Act, 1867.

31 & 32 Vict. c. 22.—The Petty Sessions and Lock-up House Act, 1868 (section 3).

31 & 32 Vict. c. 46.—The Boundary Act, 1868 (First Schedule).

31 & 32 Vict. c. 58.—The Parliamentary Electors Registration Act, 1868.

31 & 32 Vict. c. 125.—The Parliamentary Elections Act, 1868 (sections 43 and 45).

31 & 32 Vict. c. 130.—The Artizans and Labourers Dwellings Act, 1868 (section 3).

33 & 34 Vict. c. 75.—The Elementary Education Act, 1870 (section 3).

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A.).

34 & 35 Vict. c. 56.—The Dogs Act, 1871 (Schedule).

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2).

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).

35 & 36 Vict. c. 91.—An Act to authorize the application of funds of municipal corporations and other governing bodies in certain cases.

38 & 39 Vict. c. 17.—The Explosives Act, 1875 (section 108).

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4).

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 24).

39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37).

40 & 41 Vict. c. 21.—The Prison Act, 1877 (section 59).

41 & 42 Vict. c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).

41 & 42 Vict. c. 74.—The Contagious Diseases (Animals) Act, 1878 (sections 7 and 66).

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38).

PART II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the

law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases:

In section 24, for Schedule O. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870:

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

CHAP. 51.

Government Annuities Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
 2. *Limit of grant of annuities.*
 3. *Contract for endowments and definition of insurance.*
 4. *Limits of insurance.*
 5. *Tables for annuities and insurances.*
 6. *Regulations.*
 7. *Application of Savings Banks Acts.*
 8. *Trust and joint account.*
 9. *Insane or incapacitated grantee.*
 10. *Amendment of 27 & 28 Vict. c. 43. ss. 8 and 11. as to surrender of policy or assignment of policy after payment of five years premium.*
 11. *Forfeiture by person holding annuity or insurance exceeding the maximum or making false declaration.*
 12. *Penalty for receiving annuity or insurance in fraud of the Commissioners.*
 13. *Application and investments of sums paid for savings bank annuities or insurances.*
 14. *Definitions.*
 15. *Repeal of Acts and savings.*
 16. *Extension of Acts to Channel Islands and Isle of Man.*
- SCHEDULE.

An Act to extend the Acts relating to the purchase of small Government Annuities and to assuring payments of money on death.

(18th August 1882.)

WHEREAS under the Government Annuities Acts, 1829 to 1873, the National Debt Commissioners are authorised either directly or through the medium of a savings bank to grant annuities and to contract for payments on death within the limits and subject to the conditions in the said Acts mentioned, and it is expedient to make further provision respecting such annuities and contracts:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Government Annuities Act, 1882.

This Act and the Government Annuities Acts, 1829 to 1873, may be cited together as the Government Annuities Acts, 1829 to 1882.

This Act shall be construed as one with the Government Annuities Act, 1864.

The Act of the session of the twenty-seventh

and twenty-eighth years of the reign of Her present Majesty, chapter forty-six, intituled "An Act to provide for the investment and appropriation of all moneys received by the Commissioners for the Reduction of the National Debt on account of deferred life annuities and payments to be made on death," is in this Act referred to and may be cited as the Government Annuities (Investments) Act, 1864.

2. An annuity granted to any one person under the Government Annuities Acts, 1853 and 1864, as amended by this Act (in this Act referred to as a savings bank annuity), may be of any amount not exceeding one hundred pounds a year.

Any such annuity may be granted to any person not under the age of five years.

3. The National Debt Commissioners may, subject to the limits in this Act mentioned, contract with any person for a payment to be made on the attainment by such person of a specified age, or sooner in case of his death, and the Government Annuities Acts, 1853 and 1864, as amended by this Act (including the provisions punishing false declaration, forgery, and other offences), shall apply in like manner, so far as is consistent with the tenour thereof, as if such contract were a contract for the payment of a sum of money on death; and a contract with a person under the said Acts as amended by this Act for either any such payment to him as above in this section specified, or for a payment at his death, is in this Act referred to as a savings bank insurance.

4. A savings banks insurance granted to one person may be for any amount not exceeding one hundred pounds.

(2.) A savings banks insurance may be granted to a person not over the age of sixty-five years and not under the age of fourteen years, or if the amount does not exceed five pounds, not under the age of eight years.

5. (1.) The Treasury may on the passing of this Act cause tables to be constructed for the grant of savings banks annuities and insurances.

(2.) Every such table when approved by the Treasury shall, together with a statement of the rules observed in constructing it, be laid before both Houses of Parliament for not less than thirty days, and if any address is presented to Her Majesty by either House of Parliament praying that such table may be cancelled, the table shall be cancelled without prejudice to the framing of another table in lieu of the table so cancelled.

(3.) After the expiration of the said thirty days the Treasury may cause the table, if not cancelled as above provided, to be published in the London Gazette, and the table shall come into operation on the day of that publication or such later day as may be fixed by the Treasury.

(4.) The tables shall be framed in such manner that the fund formed by the receipt of sums in respect of deferred annuities and of insurances and the amounts paid for immediate annuities shall respectively be adequate (after payment of expenses) to meet all claims without causing any loss to the Exchequer.

(5.) The tables shall be framed so that the payments to obtain the annuities and insurances may be made in one sum or in annual or more frequent instalments, and may be made during life or during a limited period.

(6.) The tables may also provide for such variations in the rates for and conditions of annuities and insurances and such surrender of insurances and such other matters as may seem expedient.

(7.) The Treasury may from time to time cause a new table to be constructed under this Act in lieu of any then existing table, and such table shall be laid before Parliament and be subject to be cancelled and be published in manner above provided by this section.

(8.) All savings banks annuities and insurances shall be granted in accordance with the tables for the time being in force in pursuance of this Act, and upon any new table made under this section coming into operation, any previously existing table in lieu of which such new table is expressed to be made shall, whether made before or after the passing of this Act be revoked without prejudice nevertheless to any annuity or insurance granted in accordance therewith.

(9.) If the fund formed by the receipt of sums in respect of insurances is so much in excess of the liabilities that it is possible to reduce the payments made to obtain insurances, and a new table is made under this section for that purpose, the Treasury may provide for giving to the persons entitled to insurances in force at that time such portion of the surplus of the said fund as seems just in such manner as seems expedient.

6. The regulations made in pursuance of section sixteen of the Government Annuities Act, 1864, shall provide:—

(a.) For proofs of age, of identity, and state of health, and such other matters as appear necessary or proper for the grant of annuities and insurances, and in the case of an insurance for such sum not exceeding twenty-five pounds as may be

fixed by the regulations, for diminishing the amount to be paid to the insured in the event of any regulation as to medical certificates or any other matters having been dispensed with; and

- (b.) For regulating the time and mode of making the payments to obtain savings banks annuities and insurances, whether granted before or after the passing of this Act, and enabling them to be made out of the deposits in a savings bank; and
- (c.) For crediting the accounts of depositors in a savings bank with the sum due in respect of savings bank annuities or insurances granted to them either before or after the passing of this Act, or otherwise for regulating the mode of payment of such annuities or insurances, or of any annuities granted under any Acts repealed by the Government Annuities Act, 1853, and for regulating the receipts to be given for the same; and
- (d.) For cancelling or varying contracts for the grant of annuities and insurances and correcting errors arising on any such grant; and
- (e.) For enabling a person to whom an insurance is granted to nominate a person to whom the money due under such insurance, not exceeding fifty pounds, is to be paid on the death of such person, and for the discharge to be given for such money; and
- (f.) In the case of minors under the age of twenty-one years for the making of contracts, the making of payments to obtain savings bank annuities and insurances out of the deposits in a savings bank, the giving of receipts and the doing of other acts on their behalf; and the contracts and payments so made, the receipts so given, and acts so done shall be valid and binding on the minor.

The regulations shall also make such provisions as seem to the authority making the same necessary or proper for making payments on the death of children under ten years of age subject to the provisions contained in section twenty-eight of the Friendly Societies Act, 1875, in like manner as if the same were the payments in that section mentioned.

Regulations may be made, in pursuance of the said section sixteen of the Government Annuities Act, 1864, as amended by this Act, by the National Debt Commissioners, with the approval of the Treasury, so far as regards any annuities and insurances granted by such Commissioners either directly or through any parochial or other society.

7. Subject to the provisions of this Act and

of the regulations made under the Government Annuities Act, 1864, as amended by this Act, all enactments for the time being in force relating to savings banks, and all regulations made in pursuance of those enactments, shall, so far as is consistent with the tenour thereof, apply for the purposes of this Act, and a person to whom a savings bank annuity or insurance has been granted, either before or after the passing of this Act, shall be deemed for the purpose of those regulations and enactments to be a depositor in a savings bank.

Provided that—

- (a.) for the purpose of the immediate purchase of a savings banks annuity or insurance, a deposit to an amount not exceeding the amount to be paid for such annuity or insurance may be deposited in any one savings bank year, in addition to the maximum amount which otherwise is allowed to be deposited in a savings bank in that year, and
- (b.) in computing the maximum amount of deposit allowable for a depositor in a savings bank, any deposit for the above-mentioned purpose and any sum credited to the account of a depositor in respect of any savings bank annuity or insurance shall not be reckoned, and it shall be lawful to credit the account of a depositor with any such deposit or sum: Provided that if, after such deposit or sum has been credited, the aggregate sum standing to the credit of a depositor exceeds the maximum amount which otherwise is allowed to be deposited in a savings bank, either in any one savings bank year or in the aggregate, such excess shall bear no interest, but shall be forthwith applied to the purpose for which it was deposited, or paid over to the depositor.
- (c.) Nothing in the said Acts or this Act shall exempt any person obtaining or becoming entitled to a savings bank insurance from any probate or stamp duty payable by law.

8. (1.) Notice of any trust express, implied, or constructive affecting any savings bank annuity or insurance (except such trusts as are from time to time recognised by law in relation to deposits in savings banks, and except such trusts as are provided for by section ten of the Married Women's Property Act, 1870, or any enactment now or hereafter to be passed relating to the property of married women,) shall not be entered upon any contract for such annuity or insurance, or in any deposit book relating thereto, or be receivable by the National Debt Commissioners or any savings bank.

(2.) A savings bank annuity or insurance depending on the life of any person may be granted to that person jointly with any other persons to an amount not exceeding in the whole the amount of the annuity or insurance which could have been granted to one person, and the said persons shall be deemed to be entitled to such annuity and insurance as joint tenants.

(3.) The National Debt Commissioners may permit the transfer of any annuity so granted to more persons than one under such regulations, as to such Commissioners seem fit, so however that the person on whose life such annuity is granted shall be transferee, or one of the transferees, and where it is granted on the joint lives of two or more persons, all of those persons, or such of those persons as the National Debt Commissioners think fit, shall be the transferees or included among the transferees.

9. Where any person entitled to a savings bank annuity or insurance is insane or otherwise incapacitated to act, then (subject to the conditions prescribed by the regulations under section sixteen of the Government Annuities Act, 1864, as amended by this Act) payment of such annuity or insurance may be made at such times and in such sums and to such persons as may seem proper, and the receipt of the said persons shall be a good discharge for the same.

10. Whereas by the Government Annuities Act, 1864, it is provided that a person who has obtained a savings bank insurance, and has paid the premiums thereon for a period of not less than five years, may (under section eight) surrender his policy or obtain a return in respect of the premiums paid by him (not being less than one-third thereof) or obtain another savings bank insurance or annuity in lieu of such premiums, and (under section eleven) may assign his right and interest in such insurance, and it is expedient to amend the said section: Be it therefore enacted as follows:

A person who has obtained a savings bank insurance, and has paid the premiums thereon for not less than two years, shall have the same right under sections eight and eleven of the Government Annuities Act, 1864, as a person has who has paid the premiums for not less than five years, and sections eight and eleven of the said Act shall be construed as if "two years" were therein substituted for "five years," and so much of the said section eight as requires the amount returned to be not less than one-third of the premiums shall be repealed.

11. (1.) If any one person by his own act holds or claims to be entitled to any savings

bank annuities or insurances, whether granted before or after the passing of this Act, which exceed in the whole the maximum annuity or insurance allowed by this Act to be granted to any one person, such person shall be liable, in the discretion of the National Debt Commissioners, to forfeit the whole or any part of such annuities or insurances.

(2.) Any person who makes a false declaration in relation to any matter or thing required by the Government Annuities Act, 1853 and 1864, or by this Act, or by the regulations made in pursuance of the said Acts, or any of them, or produces any false declaration or certificate, shall be liable, in the discretion of the National Debt Commissioners, to forfeit the whole or any part of the savings bank annuity or insurance to which such false declaration or certificate related or for the purpose of obtaining which it was made or produced, and all or any part of the money paid for obtaining such annuity or insurance, and the National Debt Commissioners may, in lieu of all or any part of such forfeiture, adjust the contract made by such person so as to be in accordance with what it would have been if such false declaration or certificate had not been made or produced.

(3.) If a person makes any such false declaration as aforesaid knowing the same to be false in any material particular, he shall, in addition to such forfeiture, be liable on conviction to imprisonment, with or without hard labour, for a period not exceeding twelve months.

12. (1.) If any person receives any payment in respect of any savings bank annuity after the death of the person at whose death such annuity is to cease, or receives the amount of any insurance payable at the death of a person before the death of that person, he shall be liable to pay to the National Debt Commissioners double the amount of the sum received, with interest thereon at the rate of five per cent. per annum from the date of the receipt: such sum shall be recoverable in a county court or any other competent court as a debt to Her Majesty.

(2.) If a person receiving any such money as above mentioned received the same with intent to defraud, he shall, in addition to the above-mentioned payment, be liable on conviction to imprisonment with or without hard labour for a period not exceeding twelve months.

13. (1.) All sums paid in order to obtain savings bank annuities and insurances shall be paid into the bank to the account of the National Debt Commissioners, and there

carried to such account or accounts and under such title or titles as the National Debt Commissioners from time to time direct, but such current outgoings as herein-after mentioned may be defrayed thereout, either before or after such payment into the bank, and the application thereof herein-after mentioned shall be subject to such defraying of outgoings.

(2.) The sums paid for immediate annuities shall be forthwith applied in the purchase of government annuities (that is to say,) of perpetual bank annuities, terminable annuities, exchequer bills, exchequer bonds, or treasury bills, and the securities so purchased shall be forthwith cancelled, and ceased to be charged on the Consolidated Fund.

(3.) All immediate annuities granted under this Act shall be charged on the Consolidated Fund and issued thereout, or out of the growing produce thereof, at such times as the Treasury may from time to time direct with a view to the due payment thereof to the persons entitled thereto.

(4.) The Government Annuities (Investments) Act, 1864, shall apply to all sums paid into the bank as aforesaid, other than amounts applicable for immediate annuities as above provided.

(5.) In the event of any contract for a savings bank annuity or insurance being cancelled or varied in pursuance of this Act, or any error therein corrected, the National Debt Commissioners may vary the charge on the Consolidated Fund, and on the fund created under the Government Annuities (Investments) Act, 1864, in such manner as may be necessary for carrying into effect such cancellation, variation, or correction, and the Treasury may, if need be, create new securities in lieu of any securities which have been cancelled, and the securities so created shall be charged on the Consolidated Fund, and payable in like manner, and be subject to the same conditions as the securities which were cancelled.

(6.) The expression "current outgoings" includes all sums payable by the National Debt Commissioners in respect of annuities or insurances from time to time, and also all such expenses of carrying into effect this Act as are payable out of the sums paid by persons to obtain savings bank annuities and insurances.

All expenses incurred by any savings bank in the execution of this Act to such amount as may be from time to time allowed by the National Debt Commissioners (subject to the directions of the Treasury) shall be paid by the National Debt Commissioners, and defrayed by them as part of the expenses of the grant of annuities and insurances.

(7.) The expression "bank" in this section means the Governor and Company of the Bank of England, or the Governor and Company of the Bank of Ireland, as the case requires.

14. In this Act, unless the context otherwise requires—

The expression "Treasury" means the Commissioners of Her Majesty's Treasury;

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt;

The expression "trustee savings bank" means a savings bank to which the Trustee Savings Banks Act, 1863, extends; and

The expression "savings bank" means a trustee savings bank and a post office savings bank.

A savings bank year shall be reckoned as the twelve months ending, in the case of a trustee savings bank, on the twentieth day of November, and in the case of a post office savings bank, on the thirty-first day of December.

15. The Acts specified in the schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, without prejudice to anything previously done or suffered in pursuance of any enactment hereby repealed; and every annuity and insurance granted before such commencement shall, save as may otherwise be provided by this Act or by regulations under the Government Annuities Act, 1864, as amended by this Act, have effect as if the said enactment had not been repealed.

Until revoked in pursuance of this Act, the tables in force at the commencement of this Act shall continue in force as if made in pursuance of this Act.

The regulations in force under any enactment repealed by this Act shall continue in force until revoked or superseded by regulations made in pursuance of section sixteen of the Government Annuities Act, 1864, as amended by this Act.

Where, at the passing of this Act, a person has obtained an annuity or insurance through the medium of a post office, and such person has a deposit in a trustee savings bank, nothing contained in this Act or done thereunder shall render such deposit in a trustee savings bank unlawful or prevent such person from making or receiving any payment in respect of such annuity or insurance by means of the post office savings bank.

16. The Government Annuities Act, 1853, the Isle of Man, and the Royal Courts of the the Government Annuities Act, 1864, and this Channel Islands shall register the same accordingly. Act shall extend to the Channel Islands and

—o-o-o—
SCHEDULE.

REPEAL OF ACTS.

NOTE.—A description or citation of a portion of an Act is inclusive of the words of the section part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
16 & 17 Vict. c. 45	The Government Annuities Act, 1853.	Section two from "to any amount" down to the end of the section; section four, section five, section six, section seven, section eight, section nine, section twelve, section thirteen, from "may require such proofs" down to "the purposes of this Act and": section fourteen, section sixteen, down to "remain in force and"; and from "alter, revoke, and recall" down to "Treasury and also"; and from "provided always that the said" to the end of the section; section seventeen, section eighteen, section nineteen, section twenty-two, so far as relates to savings banks; section twenty-three, section twenty-four, section twenty-six, section twenty-seven, from "shall be free" down to "annuities"; section thirty, section thirty-three, and section thirty-five.
27 & 28 Vict. c. 43	The Government Annuities Act, 1864.	Section one, section two, section four, section five, section six. In section eight "the words not being less than" one-third of the premiums paid by "him"; section nine, section twelve, section thirteen.

CHAP. 52.

Annual Turnpike Acts Continuance Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Schedule 1.*
 2. *Schedule 2.*
 3. *Schedule 3.*
 4. *Schedule 4.*
 5. *Schedule 5.*
 6. *Schedule 6.*
 7. *Continuance of all other Turnpike Acts.*
 8. *Continuance of liability to repair under special contracts after expiration of trust.*
 9. *Extent of Act.*
 10. *Short title.*
- SCHEDULES.

An Act to continue certain Turnpike Acts, and to repeal certain other Turnpike Acts; and for other purposes connected therewith.

(18th August 1882.)

WHEREAS it is expedient to continue for limited times some of the Acts herein-after specified, and to repeal others:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts specified in the first schedule annexed hereto shall continue in force until the first day of November one thousand eight hundred and eighty-two, and no longer.

2. The Acts specified in the second schedule annexed hereto shall be repealed on and after the first day of November one thousand eight hundred and eighty-two.

3. The Acts specified in the first and second columns of the third schedule annexed hereto shall, to the extent specified in the third column thereof, as from the dates specified in the fourth column thereof, be subject to the modifications specified in the fifth column thereof, and shall, to the same extent, as so modified, continue in force until the dates specified in the sixth column thereof, and no longer.

Where specified in the seventh column

thereof the arrears of interest due on the twenty-fifth day of March one thousand eight hundred and eighty-two, and remaining unpaid at the time of the passing of this Act, in respect of the roads subject to the trusts comprised in so much of the Acts as is specified in the third column thereof, are hereby extinguished.

4. The Act specified in the first and second columns of the fourth schedule annexed hereto shall, as from the date specified in the third column thereof, be subject to the modifications specified in the fourth column thereof and in the third schedule of the Annual Turnpike Acts Continuance Act, 1881, and shall as so modified continue in force until the first day of November one thousand eight hundred and eighty-eight, when the said Act shall be repealed.

5. The Acts specified in the fifth schedule annexed hereto shall continue in force until the first day of November one thousand eight hundred and eighty-three, and no longer, unless Parliament in the meantime otherwise provides.

6. The Acts specified in the first and second columns of the sixth schedule annexed hereto shall, to the extent specified in the third column thereof, be repealed on and after the first day of November one thousand eight hundred and eighty-three, unless Parliament in the meantime otherwise provides, due regard being had to local requirements, and to the special circumstances of the trust.

7. All other Acts now in force for regu-

lating, making, amending, or repairing any turnpike road which will expire at or before the end of the next session of Parliament, shall continue in force until the first day of November one thousand eight hundred and eighty-three, and to the end of the then next session of Parliament, unless Parliament in the meantime otherwise provides; but this section shall not affect any Act continued to a specified date and no longer, or any Act which is to be repealed at a specified time.

8. The liability of any person for, or to contribute towards, the maintenance, watering, or lighting of any part of a turnpike road, the trust of which has expired, or shall hereafter expire, shall continue in force, notwithstanding the expiration of the trust; and any contract or obligation, under which such liability was created, entered into with the trustees of the turnpike road and not expressly made deter-

minable on the happening of that event, may be enforced against the person who has entered into such contract or obligation, so far as relates to so much of the road as is within the jurisdiction of any highway authority, by such authority, in the same manner as the same might have been enforced by the trustees of the turnpike road.

In this section "person" includes any body of persons, corporate or incorporate; and "highway authority" means surveyor of highways, highway board, or urban sanitary authority.

9. This Act shall not apply to Scotland or Ireland.

10. This Act may be cited for all purposes as the Annual Turnpike Acts Continuance Act, 1882.

SCHEDULES.

SCHEDULES 1 to 4.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Derby	Ashbourne, Sudbury, and Yoxall Bridge	4	15
	Chesterfield and Worksop	3	12
	Glossop and Marple Bridge	1	1
Devon	Kingsbridge and Dartmouth	1	8
Dorset	Blandford and Wimborne	1	5
	Poole	1	9
Durham	Egleston Roads	3	14
Kent	Tonbridge and Ightham	1	7
Lancaster	Rochdale and Edenfield	1	6
Lincoln	Lincoln Heath and Market Deeping :—Bourn district	1	3
Stafford	Uttoxeter and Callingwood Plain	4	15
Sussex	Beeding and Old Shoreham	3	13
	Horsham and Steyning	3	13
York	Doncaster and Tadcaster	1	4
	Wakefield and Aberford	2	11
Flint	Lower King's Ferry	1	2
	St. Asaph and Conway	2	10

FIRST SCHEDULE.

Acts which are to continue in force until the 1st of November 1882, and no longer.

Date of Act.	Title of Act.
23 Vict. c. xxi. -	1. An Act to repeal the Act for amending and improving the road from Glossop to Marple Bridge, in the county of Derby, and the several branches of roads leading to and from the same, and to make other provisions in lieu thereof.
23 Vict. c. xxxii. -	2. An Act for the further continuance of the Lower King's Ferry Roads Turnpike Trust and for other purposes.
23 Vict. c. xli. -	3. An Act to provide for the management, maintenance, and repair of the turnpike road from Lincoln Heath to Market Deeping, and other roads in connexion therewith; and for other purposes: <i>so far as the same relates to "the Bourn district."</i>
23 & 24 Vict. c. cxviii. -	4. An Act for the Doncaster and Tadcaster Road, in the west riding of the county of York.
23 & 24 Vict. c. cxlvi. -	5. An Act to repeal an Act of the first year of the reign of King William the Fourth, intituled "An Act for repairing the road " from Wimborne Minster to Blandford Forum, in the county of " Dorset, and to make other provisions in lieu thereof; and for " other purposes."
29 Vict. c. lxxix. -	6. An Act for repairing and maintaining the road from Bochdale to Edenfield, in the county palatine of Lancaster; and for other purposes.
29 & 30 Vict. c. cx. -	7. An Act to repeal an Act passed in the eleventh year of the reign of His Majesty King George the Fourth, intituled "An " Act for amending and improving the road from Tonbridge to " Ightham and other roads communicating therewith, in the " county of Kent; and for granting more effectual powers in lieu " thereof."
29 & 30 Vict. c. clxx. -	8. An Act to continue the Kingsbridge and Dartmouth Turnpike Roads Trust, in the county of Devon; and for other purposes.
30 Vict. c. xl. -	9. An Act for the Poole roads, in the county of Dorset.

SECOND SCHEDULE.

Acts which are to be repealed on and after the 1st of November 1882.

Date of Act.	Title of Act.
26 Vict. c. xix. -	10. An Act to repeal an Act passed in the third year of the reign of His late Majesty King William the Fourth, intituled "An Act for " the more effectually repairing and maintaining the turnpike " road from Pant Evan Brook in the county of Flint to Abergele " in the county of Denbigh, and thence to Conway Ferry House " in the county of Carnarvon."
26 & 27 Vict. c. cxxxv. -	11. An Act to extend the term and amend the provisions of the Act relating to the turnpike road from Wakefield to Aberford, in the county of York.

THIRD SCHEDULE.

Acts which are to continue in force until the dates specified in each instance, and no longer, subject to modifications.

1. Date of Act.	2. Title of Act.	3. Extent to which Act is modified and continued.	4. Dates from which Modifications are to commence.	5. Modifications.	6. Dates up to which continuation is enacted.	7. Arrears of interest extinguished.
23 Vict. c. xxiii.	12. An Act for more effectually repairing the road from Chertarfield, in the county of Derby, to Worksop, in the county of Nottingham.	The whole Act	1st November 1882.	No interest payable -	1st November 1883, and no longer.	Arrears of interest to be extinguished.
23 Vict. c. lxxx.	13. An Act for repairing the roads from Horsham to Steyning, and from thence to the top of Steyning Hill, in the county of Sussex, and from the bottom of Steyning Hill to Slaughter's Corner, in the parish of Beeding, and from thence to Shoreham Bridge, in the parish of Old Shoreham, in the said county.	So far as the same relates to the first district of the roads. So far as the same relates to the second district of the roads.	1st November 1882.	No interest payable - Tolls at Horsham Gate to be reduced by one-half. Not less than 350 <i>l.</i> per annum to be expended in the repairs of the road. No interest payable - Not less than 60 <i>l.</i> per annum to be expended in the repairs of the road.	1st November 1885, and no longer. 1st November 1885, and no longer.	Arrears of interest to be extinguished. Arrears of interest to be extinguished.
23 & 24 Vict. c. cxii.	14. An Act to create a further term in the Eggleston roads; to add other roads to the trust; to repeal, amend, and extend the Act relating to the said roads; and for other purposes.	The whole Act	1st November 1882.	No interest payable - Not less than 250 <i>l.</i> per annum to be expended in the repairs of the roads.	1st November 1887, and no longer.	—

FOURTH SCHEDULE.

Act which is to continue in force, subject to modifications until the 1st of November 1888, when the said Act shall be repealed.

1.	2.	3.	4.
Date of Act.	Title of Act.	Date from which Modifications are to commence.	Modifications.
26 & 27 Vict. c. xcvi.	15. An Act to repeal an Act passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled "An Act for repairing, altering, and improving the roads from Ashbourne to Sudbury, and from Sudbury to Yoxall Bridge, and from Hatton Moor to Tutbury, and from Uttoxeter to or near the village of Draycott-in-the-Clay, and from Hadley Plain on the late forest or chase of Needwood to Callingwood Plain on the same late forest or chase," and to make other provisions in lieu thereof.	1 November 1882.	The two districts to be united from and after the 1st November 1882. So much of section 26 as limits the amount allowed for repairs to be repealed. The trustees to have power to expend 500l. out of the surplus funds of the Sudbury district, in their hands on the 1st November 1882, on the improvement (otherwise than by ordinary repairs) of the roads of such district. The Sudbury toll gate to be abolished from and after the 1st November 1882.

SCHEDULES 5 AND 6.

County.	Name of Trust.	No. of Schedule.	No. of Act.
Cumberland -	Carlisle and Eamont Bridge, Northern Division -	5	2
Devon -	Tiverton -	5	4
Gloucester -	Tewkesbury, Severn Bridge -	5	1
Kent -	Biddenden to Boundgate -	5	3
Lancaster -	Oldham and Ripponden -	5	5
Northumberland	Berwick, Norham, and Islandshires -	5	7
	Ford and Lowick -	5	9
Surrey -	Kingston and Leatherhead -	5	6
York -	Botherham and Wortley -	5	8
Anglesey -	Shrewsbury and Holyhead -	6	{ 10, 11. 12, 13.
Carnarvon -			
Denbigh -			
Merioneth -			
Salop -			

FIFTH SCHEDULE.

Acts which are to continue in force until the 1st of November 1883, and no longer, unless Parliament in the meantime otherwise provides.

Date of Act.	Title of Act.
13 & 14 Vict. c. lxvi. -	1. An Act for continuing the term of an Act passed in the fourth year of the reign of His late Majesty King George the Fourth, intituled, An Act for building a bridge over the River Severn at or near to the Mythe Hill, within the parish and near to the town of Tewkesbury, in the county of Gloucester, to the opposite side of the said river, in the parish of Bushley, in the county of Worcester, and for making convenient roads and avenues to communicate with such bridge, within the counties of Gloucester and Worcester, and of another Act passed in the seventh year of the reign of His late Majesty King George the Fourth, intituled, An Act for altering, amending, and enlarging the powers and provisions of an Act relating to the Tewkesbury Severn Bridge and Roads, for the purpose of paying off the debt now due on the said bridge and roads; <i>so far as the same relates to the bridge over the River Severn at or near to the Mythe Hill.</i>
22 & 23 Vict. c. xxv. -	2. An Act to repeal an Act passed in the eleventh year of the reign of King George the Fourth, chapter one hundred and ten, intituled "An Act for more effectually repairing the road from Carlisle to Penrith, and from Penrith to Eamont Bridge, in the county of Cumberland," and to make other provisions in lieu thereof; <i>so far as the same relates to the "Northern Division" of the road.</i>
24 Vict. c. v. -	3. An Act to continue the Biddenden Turnpike Trust in the county of Kent; and for other purposes.
24 Vict. c. xix. -	4. An Act to repeal an Act of the eleventh year of the reign of King George the Fourth, for improving several roads and making certain new roads in the counties of Devon and Somerset leading to and from the town of Tiverton, and for amending an Act of His present Majesty for repairing several roads leading from and through the town of Wiveliscombe, and to make other provisions in lieu thereof.
24 Vict. c. xxv. -	5. An Act to repeal an Act for more effectually amending the road from Oldham, in the county of Lancaster, to Ripponden in the county of York, and other roads in the same counties, and for making and maintaining a new branch to communicate therewith, and to make other provisions in lieu thereof, so far as regards the said road from Oldham to Ripponden, and the other roads already made in connexion therewith.
24 Vict. c. xxvii. -	6. An Act for extending the term and amending the provisions of the Act relating to the Kingston-upon-Thames and Leatherhead turnpike road, in the county of Surrey.
24 Vict. c. lix. -	7. An Act for maintaining certain roads and bridges in the county of the borough and town of Berwick-upon-Tweed, and counties of Northumberland and Berwick, and for the liquidation of the debt due on the security of the tolls taken on the said roads and bridges.
25 & 26 Vict. c. cxix. -	8. An Act for the Rotherham and Wortley turnpike road, in the West Riding of the county of York.
30 Vict. c. lxxiv. -	9. An Act for maintaining certain roads and bridges in the county of Northumberland, called the Ford and Lowick turnpikes, and for the liquidation of the debt due on the security of the tolls taken at the said roads and bridges.

SIXTH SCHEDULE.

Acts which to the extent specified are to be repealed on and after the 1st of November 1883, unless Parliament in the meantime otherwise provides.

1. Date of Act.	2. Title of Act.	3. Extent of Repeal.
59 Geo. 3. c. 30. -	10. An Act for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon, and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His present Majesty, from the future repair and maintenance thereof; and for altering and repealing so much of the said Acts as affects the said line of road.	The whole Act.
59 Geo. 3. c. 48. -	11. An Act to amend an Act passed in the fifty-fifth year of His present Majesty for granting to His Majesty the sum of twenty thousand pounds towards repairing roads between London and Holyhead by Chester, and between London and Bangor by Shrewsbury, and for giving additional powers to the Commissioners therein named to build a bridge over the Menai Straits, and to make a new road from Bangor Ferry to Holyhead, in the county of Anglesea.	So far as the same relates to the roads comprised in the Shrewsbury and Holyhead Turnpike Trust.
5 & 6 Will. 4. c. 21. -	12. An Act to amend and alter an Act of the fifty-ninth year of His late Majesty King George the Third, for vesting in Commissioners the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and for discharging the trustees under several Acts of the seventeenth, twenty-eighth, thirty-sixth, forty-first, forty-second, forty-seventh, and fiftieth years of His then present Majesty, from the future repair and maintenance thereof; and for repealing so much of the said Acts as affects the said line of road.	The whole Act.
3 & 4 Vict. c. 104. -	13. An Act to transfer to the Commissioners of Her Majesty's Wood and Works, and other commissioners, the several powers now vested in the commissioners for repairing the line of road from Shrewsbury, in the county of Salop, to Bangor Ferry, in the county of Carnarvon; and to amend the London and Holyhead Roads Acts, so far as relates to the Dunstable Road.	So far as the same relates to the roads comprised in the Shrewsbury and Holyhead Turnpike Trust.

CHAP. 53.

Entail (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definitions.*
3. *Heirs under new entails may disentail with the same consents as heirs under old entails.*
4. *Heirs under new entails may sell, lease, feu, and charge on the same conditions as heirs under old entails.*
5. *Applications for authority to charge for improvements and grant leases may be made in the sheriff court.*
6. *Provisions for applications for authority to borrow, charge, lease, and feu.*
7. *Improvements chargeable on estate to be deducted from valuation.*
8. *Leases may be granted at diminished rent.*
9. *Lease may be renewed two years before expiration.*
10. *Charge upon a disentailed estate may be transferred to another estate entailed on same series of heirs.*
11. *Applications may be made by guardians on behalf of minors and persons under disability.*
12. *Curator to be appointed to persons unable to consent.*
13. *Consent of nearest heir may be valued and dispensed with.*
14. *Procedure when heir in possession has disappeared.*
15. *Consent of heir who has disappeared.*
16. *Provision for disposal of fund deposited or invested after fourteen years.*
17. *Settlements by marriage contract not to be disappointed.*
18. *Powers of creditors of heir entitled to disentail.*
19. *Application for order of sale.*
20. *Procedure.*
21. *Order of sale.*
22. *Court may prescribe manner of sale.*
23. *Price to be consigned. Where price paid in consols, dividends to be paid to applicant and his successors. Where estate encumbered. Where applicant desires investment, trustees may be appointed. Powers of trustees. Purchase of lands. Price may be applied to improvements. Investment after applicant's death. Costs of application.*
24. *Provisions to husbands, wives, and children, &c. to be secured upon the fund.*
25. *Disposition to be granted at sight of Court.*
26. *Money in trust for purchase of land to be entailed.*
27. *Price of land sold to remain entailed estate.*
28. *Investment of entailed money.*
29. *Deeds granted under authority of Court to be final.*
30. *Act to apply to future entails.*

SCHEDULE.

An Act to amend the Law of Entail in Scotland. (18th August 1882.)

WHEREAS it is desirable to amend the law of entail in Scotland:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Entail (Scotland) Act, 1882, and shall apply to Scotland only.

2. The expression "Entail Acts" shall mean the Acts and sections of Acts mentioned in the schedule to this Act and this Act, and they may be cited by the short titles therein mentioned, and shall for all purposes and to all effects be read as one Act.

Other expressions shall have the same meanings as in the Entail Acts.

3. It shall be lawful for an heir of entail in possession of an entailed estate held under an entail, dated on or after the first day of August one thousand eight hundred and forty-eight to disentail the estate and acquire it in fee simple by applying to the Court in the manner provided by the Entail Acts if he shall be the

only heir of entail in existence, or if he shall obtain the like consents as are required by the third section of the Entail Amendment Act, 1848, in the case of entails dated prior to the said date.

Provided that any creditor of an heir of entail in possession who is empowered by this section by himself alone, without the consent of any other party to acquire the estate in fee simple, shall have the like powers of affecting the estate for payment of debt, and shall have the like rights and interest therein as if the entail had been dated prior to the said date.

4. It shall be lawful for an heir in possession of an entailed estate held under an entail, dated on or after the first day of August one thousand eight hundred and forty-eight, to sell the estate and to grant feus and long leases, and to charge the estate with debts or incumbrances and for improvement expenditure, and to convey, bequeath, or assign the amount of such expenditure all in like manner and with the like consents as if the entail were dated prior to the said date.

5. Any application under the Entail Amendment Act, 1875, and the Entail Amendment Act, 1878, for authority to borrow and charge for improvement expenditure, and any application for authority to grant leases under the Entail Acts may be made in the sheriff court. And it shall be lawful for the sheriff (including the sheriff substitute) to grant such authority and to exercise all necessary powers for carrying out the provisions of the said Acts in those particulars.

In such applications the procedure with regard to notice and inquiry shall be as nearly as possible the same as in applications to the sheriff for authority to feu under the Entail Amendment Act, 1868, and there shall be the like appeal to one of the divisions of the Court of Session, but there shall be no appeal from the sheriff substitute to the sheriff.

6.—(1.) Where application is made for authority to borrow and charge for improvement expenditure, the Court or sheriff may grant authority to execute bonds and dispositions in security for three fourths of the sum authorised to be borrowed, and whether the improvements shall have been executed at the date of the application or are contemplated.

(2.) Where application is made for authority to grant a feu or a lease of a portion of an entailed estate, not exceeding two acres in extent, for a scientific purpose, or other purpose of public utility, the Court or the sheriff, if satisfied that it would be for the public advantage and not prejudicial to the

estate, may grant such authority for such yearly feu duty or rent as may be agreed upon, though inadequate and below the just value, subject to such conditions as the Court or the sheriff may think fit.

Provided that it shall not be lawful for the applicant to take any grassum or consideration for granting such feu or lease other than the feu duty or the rent, and if any such grassum or consideration shall be taken such feu or lease shall be null and void.

(3.) In every case in which authority to feu or grant leases has been or shall be granted to the heir in possession of any entailed estate such authority shall be available to the succeeding heirs.

(4.) When at least one-fourth part of a capital sum borrowed for improvements on an entailed estate upon the security of a terminable rentcharge, in manner provided by the Entail Acts, shall have been defrayed by the heir in possession, it shall be lawful for such heir, without the consent of the nearest heir being required, and whether the cost of such improvements shall have been charged prior or subsequent to the passing of the Entail Amendment Act, 1875, to avail himself of the provisions of the said Act, for the substitution of a bond or disposition in security over the estate for the remainder of such capital sum.

7. In all applications for disentail under this Act, where the heir in possession shall have expended sums in improving the estate which he is entitled to charge upon the entailed estate without consents, such heir shall be entitled to produce a statement of such expenditure, and upon the Court declaring such expenditure to be properly chargeable upon the estate, the amount thereof, or such portion as the Court may declare properly chargeable, shall be deducted from the valuation of the estate before fixing the amounts of compensation payable to the next heirs.

8. Notwithstanding any prohibition contained in any deed of entail against granting leases unless such leases are without diminution of rental, it shall be lawful for any heir of entail in possession of an entailed estate to grant leases for such period as it may be otherwise competent for him to do, at a fair rent.

Provided, that it shall not be lawful for such heir to take any grassum or other consideration for granting such lease other than the rent; and if the rent shall be less than a fair rent, or if any such grassum or consideration shall be taken, such lease shall be null and void.

9. It shall be lawful for the heir in possession of an entailed estate, where any portion of the estate is held by a tenant under a current lease for not less than seven years, at any time within two years previous to the expiration of such lease, to grant a new lease at a fair rent, to commence at such expiration, and if such heir in possession shall die before the commencement of the new lease, it shall be as valid as if he were still alive.

Provided, that it shall not be lawful for such heir in possession to take any grassum or consideration for granting such lease other than the rent, and if the rent fixed shall be less than a fair rent, or if any such grassum or consideration shall be taken, such lease shall be null and void.

10. Where an entailed estate which is charged with debt or provisions shall be disentailed, it shall be lawful for the heir in possession, in substitution for such charge, and with consent of the creditor or creditors, to charge with such debt or provisions any other estate belonging to him, and entailed upon the same series of heirs to the extent to which such other estate might have been lawfully charged with such debt or provisions.

11. In every case in which it is competent for an heir in possession of an entailed estate, being of full age and not subject to any legal incapacity, to make an application to the Court under the Entail Acts, it shall hereafter be competent for an heir in possession, though a minor, with consent of his curators, or for the tutors of an heir in possession, if he is a pupil, or for his curator or other administrator if he is otherwise incapacitated, to make such application, not being an application for authority to disentail the entailed estate or any part thereof, and to execute and carry into effect any authority which may be given by the Court.

Provided that the Court shall not grant such application unless they are satisfied that it is for the benefit of the heir by whom or on whose behalf it is made.

12. In any application under the Entail Acts, to which the consent of any person is required, where such person is disabled under the provisions of the Entail Acts or otherwise from consenting by reason of being under age or subject to other legal incapacity, the Court shall appoint his tutor, curator, or other administrator, or one of his tutors, curators, or administrators, or another person to be curator ad litem to the person under disability, and such curator ad litem may consent on his behalf, and no curator ad litem who may give

any consent under this Act shall incur any responsibility on account of such consent in respect of any alleged error in judgment or inadequacy of consideration, or want of consideration therefor unless it shall be alleged and proved that he acted corruptly in the matter.

13. In any application under the Entail Acts to which the consent of the heir apparent or other nearest heir is required, and such heir or the curator ad litem appointed to him in terms of this Act shall refuse or fail to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir with reference to such application, and shall direct the sum so ascertained to be paid into bank in name of the said heir, or that proper security therefor shall be given over the estate, and shall thereafter dispense with the consent of the said heir, and shall proceed as if such consent had been obtained, and the provisions of sections five and six of the Entail Amendment (Scotland) Act, 1875, shall apply to the nearest heir as well as to other heirs, and shall apply to all applications to which consents are required, and to entails dated on or after the first day of August one thousand eight hundred and forty-eight, as well as to entails dated prior to that date.

Provided that if the application is opposed by any creditor of such heir who shall prove that prior to the passing of this Act he has lent money to such heir on the security of his right of succession to or interest in the entailed estate, or by the wife or children of such heir in whose favour he shall have granted provisions under the Entail Acts, the consent of the heir shall not be dispensed with until arrangements have been made for the payment or security of the creditor or wife or children to the satisfaction of the Court. If the heir apparent or other nearest heir whose consent is required as aforesaid shall have assigned his expectancy or interest, and the assignee shall have intimated the assignation to the heir in possession for the time being, at any time prior to the recording of the instrument of disentail, such assignee shall be entitled to appear at any time prior to such recording, and to demand that the value in money of such expectancy or interest shall be ascertained, and shall be entitled to a preference upon such value according to the date of the intimation of his assignation, and such preference shall be given effect to in his favour when the value of such expectancy or interest is paid or secured.

14. If the heir in possession of an entailed

estate shall have been absent from Scotland or shall have disappeared for a period of fourteen years and cannot be found, it shall be lawful for the next heir to make affidavit to that effect, and to apply to the Court, and the Court, if satisfied that such affidavit is true, and that there is no evidence that such heir in possession has been in life during the preceding fourteen years, may appoint a factor loco absentis to such heir in possession, and may grant authority to and ordain such factor loco absentis to execute an instrument of disentail of the estate, and such instrument shall be as valid and effectual as if it were executed by the heir in possession himself.

The value in money of the expectancy or interest in the entailed estate of the heirs whose consents to the disentail must be obtained or dispensed with under the provisions of the Entail Acts shall be ascertained and may be secured upon the estate, or on the application of the factor loco absentis, or of the next heir, the Court may grant authority to the factor loco absentis to sell the estate at the sight of the Court, and the balance of the price, after paying the value of the interests of the heirs whose consents are required or must be dispensed with as aforesaid, shall be paid into bank or invested for behoof of the heir in possession, and shall be held to be movable, subject to the provisions of the Presumption of Life Limitation (Scotland) Act, 1881.

If the heir in possession shall have been absent from Scotland or shall have disappeared for any shorter period than fourteen years and a factor loco absentis shall have been appointed under the provisions of the Presumption of Life Limitation (Scotland) Act, 1881, or otherwise, it shall be lawful for such factor to apply to the Court or the sheriff, as the case may be, for authority to feu, lease, borrow, and charge for improvement expenditure, in the same manner as the heir in possession himself might have done.

15. In any application to the Court under the Entail Acts to which the consent of an heir is required, and the applicant shall make affidavit that such consent cannot be obtained in consequence of the absence from Scotland or disappearance of such heir, and that such heir is absent from Scotland, or has disappeared and cannot be found, the Court after such inquiry as it may think fit, shall, if satisfied that the statements contained in the affidavit are true, ascertain the value in money of the expectancy or interest of such heir in the estate, and shall direct the sum so ascertained to be paid into bank in name or for behoof of such heir, or invested in such security and in

such way as the Court may direct, and thereupon the Court shall dispense with such consent, and shall proceed as if such consent had been obtained.

16. If the fund deposited or invested in terms of the preceding section shall remain unclaimed by the absent heir for a period of fourteen years from the date when he was last heard of as being alive, or by anyone deriving right or title through or from him, an application may be made to the Court by any one or more of the heirs of entail whose consent to the original application would have been required if at the date of the original application the death of the absent heir had been legally established, or by his or their representatives, and the Court shall order intimation of the application to be made to the other heir or heirs whose consent would have been required as aforesaid, or by his or their representatives, and if satisfied that the said absent heir has not been heard of during that period of fourteen years, shall ascertain by the best evidence which can then be obtained the value in money of the expectancy of such heir or heirs entitled to succeed after the absent heir, at the date of the disentail, as if the absent heir had been dead at that date, and shall apportion the fund among such heirs, or their representatives, according to their respective interest in so far as it shall be sufficient, and grant warrant for uplifting and paying the fund accordingly; and if there shall be any surplus over the ascertained value of the interests of such heirs, it shall be paid to the heir in possession at the date of the disentail, or his executors or assignees.

17. Where any heir of entail in possession of an entailed estate, or the heir apparent to such estate, shall, together or separately, have secured by obligation in any marriage contract entered into prior to the passing of the present Act the descent of such estate upon the issue of the marriage in reference to which such contract is entered into, it shall not be competent for such heir of entail in possession or heir apparent, or either of them, to apply for or to consent to the disentail of such estate until there shall be born a child of such marriage capable of taking the estate in terms of such contract, and who by himself or his guardian shall consent to such disentail, or until such marriage shall be dissolved without such child being born, unless the trustee or trustees named in such contract, or the party or parties at whose sight the provisions of the contract are directed to be carried into execution, shall concur in such application or consent.

18. Where any heir of entail in possession is entitled to disentail the estate, with the consent of any other heir or heirs, or upon such consent being dispensed with by the Court, any creditor of such heir in possession, in respect of debt incurred after the passing of this Act, who has obtained decree against him for payment and charged upon the decree, shall in the event of the debt so incurred not being paid for six months after the expiration of the charge, be entitled to apply to the Court, and the Court shall, if the said debt is not paid within three months after the date of the application, order intimation to be made to the heirs whose consents would be required or must be dispensed with by the Court in an application for disentail by the heir in possession, and in the event of any of the said heirs, or his curator ad litem, appointed in terms of this Act, refusing to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir, and shall ordain the heir in possession to grant a bond and disposition in security over the estate for the amount so ascertained in favour of such heir, and if he refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such a bond and disposition in security so executed shall be as valid as if it were executed by the heir in possession himself; and the Court shall thereafter ordain the heir in possession to execute an instrument of disentail of the estate; and if he refuses or fails to do so the Court shall grant authority to the clerk of Court to execute such instrument, and after provision is made for the interests of any other creditors whose debts are secured on the estate, the creditor aforesaid shall be entitled to affect the estate for payment of such debt, and shall have the same rights and interests therein as if an instrument of disentail had been executed and recorded by the heir in possession himself.

If the estates of such heir of entail in possession of an entailed estate shall be sequestrated for debt incurred after the passing of this Act, the trustee on his sequestrated estates shall be entitled to apply to the Court for authority to disentail the estate, and the Court shall forthwith proceed in the same manner as is directed in this section with regard to the application of a creditor.

19. It shall be lawful for the heir of entail in possession of any entailed estate, or where an entailed estate consists of land held in trust for the purpose of being entailed for the person who if the land had been entailed would have been the heir in possession, or for

the tutors, curators, or administrators of such heir or other person, to apply to the Court for an order of sale of the estate, or part of it.

20. In every application for an order of sale, in addition to the procedure prescribed for applications under the Entail Acts, the applicant shall produce and depone to a schedule signed by him, or his tutors, curators, or administrators, setting forth the debts and charges affecting the estate, and the Court shall order intimation to be made to the heirs of entail whose consents would have been required to an application for disentail, and to the creditors, if there be any, and such heirs and creditors shall be entitled to appear for the purpose of seeing that their respective interests are protected, but shall not be entitled to oppose the application.

21. The Court shall procure a report as to the value of the estate, and as to the rights and charges affecting it, and shall, unless it appear that any patrimonial interest would be injuriously affected thereby, order the estate, or a part of it, to be sold in such manner as they think proper.

Provided that in the case of any such application by or on behalf of a married woman, minor, pupil, or other person under disability, the Court shall not make the order unless they are satisfied that it will be for the benefit of the applicant.

22. The Court shall fix the time and place and manner of sale, and may authorise the sale of the estate, or such part of it, in whole or in lots, and either by public auction at such upset price or by private bargain at such price as the Court may direct, or partly by public auction and partly by private bargain, and if more advantageous to the parties, may direct the sale to be for a feuduty instead of a price to be immediately paid, or partly for a feuduty and partly for a price.

Provided that the sale shall not be by private bargain if either the applicant or the next heir shall intimate within one month after the order for sale that he desires the sale to be by public auction.

When the estate is sold by public auction any creditor or person interested, other than the applicant, may be the purchaser.

23. Upon a sale of entailed estate, or such part of it, under the orders of the Court as aforesaid, the following provisions shall have effect:

(1.) The price shall be paid into a bank to be named by the Court on a consignment receipt subject to the future orders of the

Court, or, if the applicant desires it, instead of the price being paid in money the equivalent according to the current price of the day in consolidated stock of the United Kingdom shall be transferred into a special account to be opened in the name of the Accountant of the Court of Session, subject to the order of the Court.

- (2.) Where the estate, or such part of it, is unencumbered, and where the price is paid in consolidated stock, unless desired by the applicant or his successors in the estate, no further proceedings in the nature of investment shall be necessary. The Court shall grant an order in such general form as it, after consulting the Bank of England, may settle, which order shall be an authority to the bank to pay the dividends to the applicant during his life. After the death of the applicant a similar order shall be granted to his heir of tailzie and provision on production of a decree of service.
- (3.) Where the estate is encumbered the Court shall provide for the payment out of the price of all debts secured upon the estate, and the surplus, if desired by the applicant, may be invested in consolidated stock as aforesaid under the conditions expressed in the preceding subsections.
- (4.) If the applicant desires that the price or surplus should be invested in any of the Government stocks, public funds, or securities of the United Kingdom, or heritable security in Great Britain, or in stock of the Bank of England, or in East India stock, or the mortgages or debentures or debenture stocks of such municipal corporations or public trusts, or railway companies, as may be approved by the Court after inquiry, it shall be invested as entailed money in the names of trustees to be appointed by the Court, in trust for the applicant and the heirs of entail in their order, and it shall be sufficient in the deed of security to refer to the deed of entail without setting forth the terms of the destination or the conditions and clauses of entail. The trustees shall be not less than three in number, and a majority of the trustees in all cases shall be a quorum. They shall receive such remuneration, if any, as the Court may fix, as well as all charges and expenses incurred by them. If the purchaser of the estate sold as aforesaid and the applicant desire it, a part of the price may be secured on the estate. Subsisting debts affecting the estate may, if desired, be left secured thereon and allowed for in

the settlement of the price instead of being paid off.

- (5.) If the money is called up or a change of investment is desired, the trustees shall not be bound to obtain the authority or approval of the Court in relation to new investments, but may themselves make such new investments in accordance with the provisions of this Act, or they may apply to the Court, if they think proper, for such authority. Until the first investment is found, or while it is waiting for re-investment, the entailed money shall remain in bank on a consignment receipt. The Court shall have power to accept the resignation of or to remove any trustee or trustees, and to appoint new or additional trustees, and the petition shall remain a depending process for all purposes until the entail comes to an end.
 - (6.) If it is desired that the price or surplus, whether before or after it has been invested as aforesaid, shall be applied in the purchase of other lands, the Court, after inquiry and report, may grant the requisite authority, and the purchased lands shall be settled in conformity with the subsisting destination.
 - (7.) The price of any part of an entailed estate which shall be sold under the provisions of this Act may be applied in payment of the cost of improvements executed but not charged upon the entailed estate, or executed but not charged upon any other estate belonging to the applicant and entailed upon the same series of heirs, or in course of execution, or contemplated, upon the remaining portion of the entailed estate, or upon any other estate belonging to the applicant and entailed upon the same series of heirs.
- Provided that the Court shall be satisfied that such improvements, if already executed, are of a substantial nature and beneficial to the estate at the date of the sale, or, if in course of execution or contemplated, that they will be, if well executed, of a substantial nature and beneficial to the estate.
- (8.) All applications for investment or re-investment or other application of the price or surplus which might be made by the applicant may be made by his heir of tailzie and provision for the time being after the applicant's death.
 - (9.) The costs, charges, and expenses incurred in an application to the Court for an order of sale under this Act, and other applications or procedure following thereon shall, in so far as the same properly affect the capital of the estate, form a

deduction from the price, and shall be payable out of the sum paid into bank, or deducted from the sums to be invested or applied as aforesaid, and all such costs, charges, and expenses as properly affect income shall be payable out of the income of the fund so paid into bank or invested.

24. Where provisions to husbands, wives, and children, annuities or terminable charges, are secured upon the estate, or where courtesy or terce are not excluded, due provision shall be made under the authority of the Court for their payment out of the capital or income, as the case may be, of the estate or fund into which the entailed estate is converted, or otherwise to the satisfaction of the Court, and the entailed estate shall thereafter be effectually freed and disencumbered of such provisions, annuities, charges, courtesy, or terce, by discharges to be granted by the persons in right thereof or by a decree of the Court declaring the entailed estate to be so freed and disencumbered, which discharges or decree shall be recorded in the appropriate register of sasines.

25. Upon payment of the price in money or stock as above provided (or without payment, where the sale is for a feuduty,) the applicant, or his tutors, curators, or administrators, or his heirs, shall grant a disposition at the sight of the Court containing all clauses usual and necessary for the purposes of the conveyance (according to the nature of the transaction), and in particular a clause providing that the purchaser shall have warrandice against the price, so long as the same shall remain extant, deposited or invested as aforesaid, and binding the applicant and his heirs of provision in warrandice to the extent of the shares of the price received by them respectively, in the event of the price being disentailed and divided among the applicant and his heirs of provision according to their respective interests therein. Where a portion of the price is to be secured on the estate, a bond and disposition in security containing all usual clauses shall be granted, or if the Court shall declare that any sum of money shall be a real burden on the estate, such decree on being recorded in the appropriate register of sasines

shall have the same force and effect as a bond and disposition in security duly recorded in such register.

26. Where any money or other property heritable or movable is held in trust for the purpose of purchasing land to be entailed, it shall be lawful, when the direction to purchase and entail has become operative, for the person who, if the land were entailed in terms of the trust, would be the heir entitled to possession thereof, to make summary application to the Court for warrant and authority to the person or persons by whom the said money or property is held in trust at the time, to deal with and apply the same or the proceeds thereof as if it were the price of entailed land sold in pursuance of this Act, and such money or property shall be subject to the provisions of this Act applicable to the price of entailed lands.

27. The price of an entailed estate or any part thereof sold under the provisions of this Act shall be entailed estate within the meaning of the Entail Acts.

28. The provisions of this Act with regard to the descriptions of securities and stocks in which the price of land sold may be invested shall apply to all entailed estate consisting of money.

29. Any instrument of disentail, disposition, bond and disposition in security, or other deed granted under the authority of the Court in terms of this Act, where the judgment of the Court allowing such deed has not been brought under review of the House of Lords by appeal, or where such judgment has not been brought under reduction upon any relevant ground during the period within which such judgment might have been appealed from, shall, as regards any third parties acting *bonâ fide* on the faith thereof, be no longer reducible on any ground of irregularity or non-compliance with the provisions of this Act, but in respect of any such ground of challenge be final and conclusive.

30. This Act shall apply to future as well as to existing entails.

SCHEDULE.

—	Title of Act.	Short Title.
1685, c. 26. - - 20 Geo. 2. c. 50. ss. 14, 15, 16, 17.	Act concerning tailzies - - An Act for <i>inter alia</i> allowing heirs of tailzie in Scotland to sell lands to the Crown for erecting buildings and making settlements in the Highlands.	Entail Act, 1685. Tenures Abolition Act, 1746.
20 Geo. 2. c. 51. ss. 2, 3	An Act <i>inter alia</i> to enable heirs of tailzie, guardians, tutors, curators, and trustees to sell lands to the Crown.	Sales to Crown Act, 1746.
10 Geo. 3. c. 51. - -	An Act to encourage the im- provement of lands, tenements, and hereditaments in that part of Great Britain called Scot- land, held under settlement of strict entail.	Entail Improvement Act, 1770.
5 Geo. 4. c. 87. - -	An Act to authorise the pro- prietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors.	Entail Provisions Act, 1824.
1 & 2 Will. 4. c. 43. s. 68.	An Act for amending and making more effectual the laws concerning turnpike roads in Scotland.	Turnpike Roads (Scotland) Act, 1831.
6 & 7 Will. 4. c. 42. -	An Act to grant certain powers to heirs of entail in Scotland, and to authorise the sale of entailed lands for the pay- ment of certain deaths affect- ing the same.	Entail Powers Act, 1836.
3 & 4 Vict. c. 48. -	An Act to enable proprietors of entailed estates in Scotland to feu or lease on long leases por- tions of the same for the build- ing of churches and schools, and for dwelling-houses and gardens for the ministers and masters thereof.	Entail Sites Act, 1840.
11 & 12 Vict. c. 36. -	An Act for the amendment of the law of entail in Scotland.	Entail Amendment Act, 1848.
16 & 17 Vict. c. 94. -	An Act to extend the benefits of the Act of the eleventh and twelfth years of Her present Majesty, for the amendment of the law of entail in Scot- land.	Entail Amendment Act, 1853.
23 & 24 Vict. c. 95. -	An Act to facilitate the building of cottages for labourers, farm servants, and artizans, by the proprietors of entailed estates in Scotland.	Entail Cottages Act, 1860.

—	Title of Act.	Short Title.
31 & 32 Vict. c. 84. -	An Act to amend in several particulars the law of entail in Scotland.	Entail Amendment Act, 1868.
38 & 39 Vict. c. 61. -	An Act to further amend the law of entail in Scotland.	Entail Amendment Act, 1875.
41 Vict. c. 28. - -	An Act to further amend the law of entail in Scotland.	Entail Amendment Act, 1878.
41 & 42 Vict. c. 51. s. 70.	An Act to alter and amend the law in regard to the maintenance and management of roads and bridges in Scotland.	Roads and Bridges (Scotland) Act, 1878.
43 Vict. c. 7. - -	An Act to amend the law in regard to charging road debts on entailed estates in Scotland.	Roads Amendment Act, 1880.

CHAP. 54.

Artizans' Dwellings Act, 1882.

ABSTRACT OF THE ENACTMENTS.

Preliminary.

1. *Short title.*

PART I.

Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879.

2. *Construction of Part I. of Act.*
3. *Amendment of 38 & 39 Vict. c. 36. s. 5, as to the provision of accommodation for the working classes.*
4. *Amendment of 38 & 39 Vict. c. 36. s. 19, as to the valuation of land.*
5. *Amendment of schedule to 38 & 39 Vict. c. 36.*
6. *Limit of area to be dealt with on official representation.*

PART II.

7. *Construction of Part II.*
8. *Power to local authority to purchase houses for opening alleys, &c.*
9. *Amendment of s. 7 of 42 & 43 Vict. c. 64.*
10. *Expenses of local authority.*
11. *Amendment of 42 & 43 Vict. c. 64. s. 12 as to enforcement of Act by Metropolitan Board of Works.*

SCHEDULE.

An Act to amend the Artizans and
Labourers Dwellings Acts.
(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This Act may be cited as the Artizans Dwellings Act, 1882.

PART I.

Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879.

2. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Improvement Acts, 1875 and 1879, and those Acts together with this part of this Act may be cited together as the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882.

3. Whereas by section five of the Artizans and Labourers Dwellings Improvement Act, 1875, it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas by section four of the Artizans and Labourers Dwellings Improvement Act, 1879, it is provided that the above requirements of section five of the Artizans and Labourers Dwellings Improvement Act, 1875, may, if the confirming authority so authorise, be complied with by the provision of equally convenient accommodation at some place other than within the area or the immediate vicinity of the area comprised in such scheme :

And whereas it is expedient to make further provision respecting such accommodation: Be it therefore enacted as follows :

Where an improvement scheme of a local authority comprises an area situate in the Metropolis or the City of London, the confirming authority shall, without prejudice to the powers conferred on it by the said fourth section of the Artizans and Labourers Dwellings Improvement Act, 1879, be authorised (on the application of the local authority, and

on a report being made by the officer conducting the local inquiry directed by the confirming authority that it is expedient having regard to the special circumstances of the locality and to the number of artizans and others belonging to the labouring class dwelling within the area, and being employed within a mile thereof, that a modification should be made) to dispense in the provisional order authorising the scheme altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to such extent as he may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced, and where any such improvement scheme comprises an area situate elsewhere than in the Metropolis or the City of London, it shall, if the confirming authority so require (but it shall not otherwise be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working class displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

The twelfth section of the Artizans and Labourers Dwellings Improvement Act, 1875, and any other enactment relating to the requirement of the said Act as to the accommodation of the working classes, shall be construed with reference and subject to the modifications made by this Act.

The power by this section given to the confirming authority to dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to an extent not exceeding one half of the persons so displaced may (in the case of any scheme which has, before the passing of this Act, been authorised by a confirming Act) upon the application of the local authority be exercised by the confirming authority by an order made at any time within twelve months after the passing of this Act.

4. Whereas it is expedient to amend section nineteen of the Artizans and Labourers Dwellings Improvement Act, 1875: Be it therefore enacted as follows :

In the estimate of the value of the said lands or interests in the said section in that behalf mentioned any addition to or improvement of the property made after the date of the publication of an advertisement in pursuance of section six of the said Act stating the fact of

the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands, and the words "and all circumstances affecting such value" in the said section are hereby repealed.

5. There shall be repealed so much of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, as is comprised under the heading "Proceedings on Arbitration," that is to say, articles numbered (5) to (13) both inclusive, and there shall be substituted therefor the articles contained in the schedule hereto; Provided that such repeal shall not affect anything duly done or suffered under any provision hereby repealed.

6. Where an official representation made to the Metropolitan Board of Works in pursuance of the Artizans and Labourers Dwellings Improvement Act, 1875, relates to not more than ten houses, the Metropolitan Board of Works shall not take any proceedings on such representation, but shall direct the officer making the same to report the case to the local authority as defined by the Artizans and Labourers Dwellings Act, 1868, and it shall be the duty of the local authority to deal with such case in manner provided by the last-mentioned Act, and the Acts amending the same.

PART II.

7. This part of this Act shall be construed as one with the Artizans and Labourers Dwellings Act, 1868, and the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and those Acts and this part of this Act may be cited together as the Artizans Dwellings Acts, 1868 to 1882.

8. (1.) If in any place to which the Artizans and Labourers Dwellings Act, 1868, applies the officer of health finds that any building, although not in itself unfit for human habitation is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

- (1) it stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation; or
- (2) it prevents proper measures from being carried into effect for remedying the evils complained of in respect of such other buildings,

in any such case, the officer of health shall make a report to the local authority in writing of the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building"), stating that in his opinion it is expedient that the obstructive building should be pulled down, and shall deliver the report to the clerk of the local authority.

(2.) The local authority shall refer such report to a surveyor or engineer to report thereon, and to report as to the cost of acquiring the lands on which such obstructive building is erected and of pulling down such building.

(3.) The local authority shall take into consideration the reports of the officer of health and of the surveyor, and if they decide to adopt such reports shall cause copies to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order in writing signed by their clerk either allowing the objections or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of the local authority under the Artizans and Labourers Dwellings Act, 1868.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and is not appealed against, or if appealed against is confirmed, the local authority shall be deemed to be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this Act (subject nevertheless to the provisions of this Act), and for the purpose of those provisions this Act shall be deemed to be the special Act and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the

obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided by section seven of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, as amended by this part of this Act.

(7.) Where the owner retains the site or any part thereof section twenty-three of the Artizans and Labourers Dwellings Act, 1868, shall apply to such site.

(8.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the evils caused by such obstructive building, and may, with the assent of the confirming authority and upon such terms as such authority thinks expedient, permit such portion of the site to be sold as is not required for the purpose of carrying this section into effect.

Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Act, 1875, relating to private improvement expenses and to private improvement rates shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act, and the said provisions shall be deemed to extend to the city of London and to the metropolis, and in the construction of the said provisions, as respects the city of London the Commissioners of Sewers, and as respects the metropolis the Metropolitan Board

of Works, shall be deemed to be the urban authority.

If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Consolidation Act, 1845, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

9. Section seven of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, shall be construed as if the words "and all circumstances affecting such value" were omitted therefrom.

10. The expenses of the local authority under this part of this Act shall be defrayed in like manner as expenses incurred in pursuance of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879.

11. Whereas by section twelve of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, it is provided that in the event of a local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the Metropolitan Board of Works requiring such local authority to put in force the provisions of the said Act in respect of any premises described in such notice, the Metropolitan Board of Works shall have the powers therein mentioned, and it is expedient to amend the said section: Be it therefore enacted as follows:

Where an officer of health in pursuance of the Artizans and Labourers Dwellings Act, 1868, has reported any premises as unfit for human habitation, or in pursuance of this part of this Act has reported that the pulling down of any obstructive building would be expedient, the board of guardians in whose union or parish, or the owner of any property in the neighbourhood of which such premises or buildings are situate, may complain to the Metropolitan Board of Works that the local authority have failed to put in force the provisions of the said Acts in respect of such premises or buildings, and the Metropolitan Board of Works may, if they think it expedient so to do, thereupon proceed under section twelve of the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, and that section shall apply as if it were enacted in this part of this Act and in terms made applicable to the duties of local authorities under this part of this Act.

SCHEDULE.

AMENDMENT OF SCHEDULE TO 38 & 39 VICT.
c. 36.

(1.) In lieu of articles eight to thirteen (both inclusive) of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, the following articles shall be substituted; that is to say,

Proceedings on Arbitration.

(a.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,
 ' I A.B. do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875.

' A.B.

' Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(b.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

(c.) In every case in which compensation is payable under the Artizans and Labourers Dwellings Improvement Act, 1875, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as "a disputed case"), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested in each disputed case as may appear before him at a time

and place of which notice has been given as in this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(d.) The arbitrator shall from time to time give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(e.) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal herein-after contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(f.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

(g.) Any person or local authority dissatisfied with the amount of compensation awarded may, where such amount exceeds one thousand pounds, but not otherwise,

appeal in manner provided by article twenty-six of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, and that article shall be construed as if one thousand pounds were therein substituted for five hundred pounds.

- (h.) The costs, charges, and expenses payable by the local authority under article twenty-eight of the schedule to the Artizans and Labourers Dwellings Improve-

ment Act, 1875, shall not be payable until the amount has been certified by the confirming authority.

- (i.) Notwithstanding anything contained in article twenty-nine of the said schedule, the arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration in any case where he considers that such costs are not properly payable by the local authority.

CHAP. 55.

Merchant Shipping (Expenses) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title and construction.*
2. *Commencement of Act.*
3. *Charges on Mercantile Marine Fund.*
4. *Payments to the Mercantile Marine Fund.*
5. *Subsidy out of moneys provided by Parliament to the Mercantile Marine Fund.*
6. *Suspension of fees on engagements and discharges under 17 & 18 Vict. c. 104. s. 125.*
7. *Audit of accounts of Mercantile Marine Fund.*
8. *Grant of pension to existing officers.*
9. *Costs of prosecution for offences committed at sea.*
10. *Repeal.*

SCHEDULE.

An Act to amend the Law with respect to the Charges on and Payments to the Mercantile Marine Fund, and to Expenses of Prosecutions for Offences committed at Sea.

(18th August 1882.)

WHEREAS with a view to the adjustment of the receipts and expenditure under the Merchant Shipping Acts between the Mercantile Marine Fund and moneys provided by Parliament it is expedient to make the provision herein-after mentioned:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Merchant Shipping (Expenses) Act, 1882.

This Act shall be construed as one with the Merchant Shipping Acts, 1854 to 1880, and together with those Acts may be cited as the Merchant Shipping Acts, 1854 to 1882.

2. This Act (save as is in this Act otherwise expressly provided) shall come into operation on the first day of April, one thousand eight hundred and eighty-three, which day is in this Act referred to as the commencement of this Act.

3. There shall be charged on and payable out of the Mercantile Marine Fund the following sums, so far as they are not paid by any private person:—

- (a.) The salaries of all surveyors and officers appointed, and all expenses incurred in connection with the survey and measurement of ships under the Merchant Shipping Acts, 1854 to 1876:
- (b.) The salaries and expenses of persons employed under the Passengers Act, 1855, as amended by the Merchant Shipping Act, 1872:
- (c.) The superannuation allowances, gratuities, pensions, and other allowances granted either before or after the passing of this Act to any of the said surveyors or persons:
- (d.) The expenses of obtaining depositions, reports and returns respecting wrecks and casualties:

(e.) The allowances and expenses paid for the relief of distressed British seamen and apprentices, including the expenses declared by any of the Merchant Shipping Acts, 1854 to 1882, to be payable as such expenses, and any contributions to seamen's refuges and hospitals:

(f.) Any sums which the Board of Trade, in their discretion, think fit to pay in respect of claims to moneys carried to the Mercantile Marine Fund on account of the wages and effects of deceased seamen, or on account of the proceeds of wreck:

(g.) All costs and expenses incurred by the Board of Trade under the Boiler Explosions Act, 1882 (so far as not otherwise provided for) including any remuneration paid in pursuance of section seven of that Act, and any costs and expenses ordered by the court in pursuance of that Act to be paid by the Board of Trade.

4. There shall be accounted for and paid to the Mercantile Marine Fund—

(a.) All fees, charges, and expenses payable in respect of the survey or measurement of ships under the Merchant Shipping Acts, 1854 to 1876:

(b.) All fees and other sums payable in respect of any services performed by any person employed under the authority of the Passengers Act, 1855, as amended by the Merchant Shipping Act, 1872:

(c.) The net proceeds of wreck which otherwise would be payable into the Exchequer under section four hundred and seventy-five of the Merchant Shipping Act, 1854, as amended by section fifty-three of the Merchant Shipping Act Amendment Act, 1862:

(d.) The moneys arising from the unclaimed wages and effects of deceased seamen, except where the same are required to be paid as directed by the Accountant General of Her Majesty's navy:

(e.) All such sums in respect of expenses incurred with respect to distressed seamen and apprentices as are recovered by the Board of Trade under section two hundred and thirteen of the Merchant Shipping Act, 1854, and the enactments amending the same.

(f.) All costs and expenses ordered by the court to be paid to the Board of Trade in pursuance of the Boiler Explosions Act, 1882.

All the fees in this section mentioned shall be paid at such times and in such manner as the Board of Trade from time to time direct.

5. There shall be paid to the Mercantile

Marine Fund out of moneys provided by Parliament an annual sum of forty thousand pounds, or after the expiration of five years from the commencement of this Act such other sum as may be from time to time determined by the Commissioners of Her Majesty's Treasury, with the concurrence of the Board of Trade, having regard to the receipts and expenditure of the Mercantile Marine Fund under sections three and four of this Act.

6. The Board of Trade may, if they think fit, at any time after the passing of this Act, abolish or suspend the fees payable upon engagements and discharges effected before shipping masters in pursuance of section one hundred and twenty-five of the Merchant Shipping Act, 1854, and in the event of such abolition, or pending such suspension, no deduction shall be made in pursuance of section one hundred and twenty-six of the said Act from the wages of any person engaged or discharged.

7. The accounts of the mercantile marine fund shall be deemed to be public accounts within the meaning of section thirty-three of the Exchequer and Audit Departments Act, 1866, and shall be examined and audited accordingly.

8. Where a surveyor appointed under the Merchant Shipping Acts, 1854 to 1876, or a person employed under the Passengers Act, 1855, has in pursuance of section thirty-nine of the Merchant Shipping Act, 1876, received during part of his term of service his salary out of moneys provided by Parliament, his service during the period that his salary was paid out of moneys provided by Parliament, and his service during the period that his salary was paid out of the Mercantile Marine Fund shall be reckoned indifferently as the same service for the purpose of entitling him to any superannuation allowance, gratuity, pension, or other allowance, out of the Mercantile Marine Fund.

9. Such costs and expenses of and incidental to any prosecution for a felony or misdemeanour as are by law payable out of any county or other local rate shall, where such felony or misdemeanour was committed within the jurisdiction of the Admiralty of England, be paid in the same manner and subject to the same regulations as if such felony or misdemeanour had been committed in the county in which the same is heard and determined, or when the same is heard and determined at the Central Criminal Court as if the same had been committed in the county of Middlesex, and all sums properly paid out of any county or other local rate in respect of the said costs and

expenses shall be repaid out of moneys provided by Parliament.

The expenses under section two hundred and sixty-eight of the Merchant Shipping Act, 1854, of imprisoning any such offender as therein mentioned and of conveying him and the witnesses to the United Kingdom, or to such British possession as mentioned in that section, in any manner other than in the ship to which they respectively belong, shall, where not paid

as part of the costs of the prosecution, be paid out of moneys provided by Parliament.

10. The Acts in the Schedule to this Act shall be repealed to the extent in the third column of that Schedule mentioned, without prejudice to anything done or suffered, or any right acquired or accrued in pursuance of the enactments hereby repealed.

—o-o-o—
SCHEDULE.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act in this Schedule is inclusive of the word section or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion described in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
7 Geo. 4. c. 64. -	- An Act for improving the administration of criminal justice in England.	Section twenty-seven.
4 & 5 Will. c. 36. -	- An Act for establishing a new court for the trial of offences committed in the metropolis and parts adjoining.	Section twenty-two from "and " that it shall and may be " lawful for any three" to the end of the section.
7 & 8 Vict. c. 2. -	- An Act for the more speedy trial of offences committed on the high seas.	Section one from "and it shall " be lawful for the court to " order," to the end of the section.
17 & 18 Vict. c. 104. -	- The Merchant Shipping Act, 1854.	Section two hundred and two from "and subject to the " provision herein-after contained" to the end of the section. Section two hundred and eleven from "out of any " moneys applicable" to "for " the purpose." Section two hundred and sixty-eight from "and the expense of imprisoning" to the end of the section. Section four hundred and twenty-eight.
39 & 40 Vict. c. 80.	The Merchant Shipping Act, 1876.	Section thirty-nine from the beginning down to "vested in " the Board of Trade," and the words "there may be paid " out of moneys provided by " Parliament all costs and compensation payable by the " Board of Trade in pursuance " of this Act."
40 & 41 Vict. c. 44. -	- The Superannuation (Mercantile Marine Fund Officers) Act, 1877.	The whole Act.

CHAP. 56.

Electric Lighting Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of Act.*
3. *Granting of licenses authorising the supply of electricity.*
4. *Granting of provisional orders authorising the supply of electricity.*
5. *Making of rules as to application, &c. under Act.*
6. *Regulations to be inserted in licenses, &c.*
7. *Expenses of local authority.*
8. *Power of local authority to borrow money.*
9. *Accounts.*
10. *General powers of undertakers under license or provisional order.*
11. *Power for local authority to contract in certain cases and restrictions on assignments of powers, &c. of undertakers.*
12. *Incorporation of certain provisions of Clauses Consolidation Acts.*
13. *Restriction on breaking up of private streets, railways, and tramways.*
14. *Restrictions as to above-ground works.*
15. *Power to undertakers to alter position of pipes and wires.*
16. *Clause for protection of canals.*
17. *Compensation for damage.*
18. *Undertakers not to prescribe special form of lamp or burner.*
19. *Obligation on undertakers to supply electricity.*
20. *Charges for electricity.*
21. *Recovery of charges, &c.*
22. *Injuring works with intent to cut off supply of electricity.*
23. *Stealing electricity.*
24. *Power to enter lands or premises for ascertaining quantities of electricity consumed, or to remove fittings, &c.*
25. *Electric lines, &c. not to be subject to distress in certain cases.*
26. *Provision for protection of the Postmaster-General.*
27. *Purchase of undertaking by local authority.*
28. *Arbitration.*
29. *Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.*
30. *Annual report by Board of Trade.*
31. *Definition of local authority, &c.*
32. *Interpretation.*
33. *For the protection of mines.*
34. *Provision as to general Acts.*
35. *Saving for privileges of Postmaster-General.*

As to Scotland.

36. *Application of Act to Scotland.*

As to Ireland.

37. *Application of Act to Ireland.*

SCHEDULE.

An Act to facilitate and regulate the supply of Electricity for lighting and other purposes in Great Britain and Ireland. (18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Electric Lighting Act, 1882.

2. The provisions of this Act shall apply to every local authority, company, or person who may by this Act or any license or provisional order granted under this Act, or by any special Act to be hereafter passed, be authorised to supply electricity within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act; and every such license, provisional order, and special Act, is in this Act included in the expression "license, order, or special Act."

3. The Board of Trade may from time to time license any local authority as defined by this Act, or any company or person, to supply electricity under this Act for any public or private purposes within any area, subject to the following provisions:

- (1.) The consent of every local authority having jurisdiction within the area or any part of the area within which a supply is licensed to be furnished shall be required to the application for a license, which consent such local authority is hereby authorised to give, with such conditions (if any) as, subject to the approval of the Board of Trade, the local authority may prescribe:
- (2.) A license shall be for any period not exceeding seven years, but may, at or after the expiration of such license, be renewed from time to time for a like period with such consent as above mentioned upon such terms and conditions as the Board of Trade may determine.
- (3.) "Public purposes" shall mean lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied:

(4.) "Private purposes" shall include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram:

(5.) Every local authority, company, or person applying for a license shall publish notice of their application by public advertisement in such manner and including such particulars as the Board of Trade may from time to time direct or approve; and such license shall not be granted by the Board of Trade until after the expiration of a period of three months from the date of the first publication of such advertisement, nor until opportunity has been given to all parties interested to make representations or objections to the Board of Trade with reference to the application:

(6.) No application for a license shall be made by any local authority except in pursuance of a resolution to be passed at a special meeting of the local authority, and such special meeting shall only be held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given:

(7.) A license may, subject to the provisions of this Act, be granted to a local authority authorising them to supply electricity within any area although the same or some part thereof may not be included within their own district:

(8.) The license may make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance by the licensees of their duties in relation to such supply, and for the revocation of the license where the licensees fail to perform such duties, and generally may contain such regulations and conditions as the Board of Trade may think expedient.

(9.) Where in any area or part of an area in which any undertakers are authorised to supply electricity under any license the undertakers are not themselves the local authority, the license may contain any provisions and restrictions for enabling the local authority within whose jurisdiction such area or part of an area may be to exercise any of the powers of the undertakers under this Act with respect to the breaking up of any street repairable by such local authority within such area or part of an area, and the alteration of the position of any pipes or wires being under

such street, and not being the pipes or wires of the Undertakers, on behalf and at the expense of the Undertakers, and for limiting the powers and liabilities of the Undertakers in relation thereto, which the Board of Trade may think expedient.

4. The Board of Trade may, from time to time, by provisional order authorise any local authority, company, or person to supply electricity for any public or private purposes within any area, without requiring such consents as are required to the granting a license under this Act, and for such period, whether limited or unlimited, as the Board of Trade may think proper, but in all other respects subject to the like provisions as in the last section contained with respect to licenses, and subject also to the following provisions:—

- (1.) No provisional order shall authorise the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers), unless notice that such provisional order has been or is intended to be applied for has been given to such local authority by the applicants in such manner as the Board of Trade may direct or approve on or before the first day of July in the year in which such application is made; provided that in the case of any application made during the present year such notice shall be deemed to have been given in due time if the same is given within one month after the passing of this Act:
- (2.) The Board of Trade may submit to Parliament for confirmation any provisional order granted by it in pursuance of this Act, but any such order shall be of no force unless and until it is confirmed by Act of Parliament:
- (3.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bills:
- (4.) Any Act confirming any provisional order granted in pursuance of this Act may, on the application of the undertakers thereby authorised to supply electricity, be repealed, altered, or amended by any subsequent provisional order granted by the Board of Trade and confirmed by Parliament.

5. The Board of Trade may from time to time make, and when made may rescind, alter, or repeal rules in relation to the applications

for licenses or provisional orders, and to the payments to be made in respect thereof, and to the publication of notices and advertisements, and the manner in which and the time within which representations or objections with reference to any application are to be made, and to the holding of local inquiries in such cases as they may think it advisable, and to any other matters arising under this Act.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament.

6. The undertakers shall be subject to such regulations and conditions as may be inserted in any license, order, or special Act affecting their undertaking with regard to the following matters:

- (a.) The limits within which and the conditions under which a supply of electricity is to be compulsory or permissive;
- (b.) The securing a regular and efficient supply of electricity;
- (c.) The securing the safety of the public from personal injury, or from fire or otherwise;
- (d.) The limitation of the prices to be charged in respect of the supply of electricity;
- (e.) The authorising inspection and inquiry from time to time by the Board of Trade and the local authority;
- (f.) The enforcement of the due performance of the duties of the undertakers in relation to the supply of electricity by the imposition of penalties or otherwise, and the revocation of the license, order, or special Act where the undertakers have, in the opinion of the Board of Trade, practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers; and
- (g.) Generally with regard to any other matters in connexion with the undertakings.

Provided always, that the Board of Trade may, from time to time, make such regulations as they may think expedient for securing the safety of the public from personal injury or from fire or otherwise, and may from time to time amend or repeal any regulations which may be contained in any such license, order, or special Act in relation thereto; and any regulations so made or amended by the Board of Trade shall, from and after the date thereof,

have the like effect in every respect as though they had been originally inserted in the license, order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any license, order, or special Act may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal byelaws for further securing such safety; and there may be annexed to any breach of such byelaws such penalties to be recovered in a summary manner as they may think necessary: Provided always, that no such byelaws shall have any force or effect unless and until they have been confirmed by the Board of Trade and published in such manner as the Board of Trade may direct.

7. Any expenses incurred by a local authority under this Act, and not otherwise provided for, including any expenses incurred in connexion with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any license, order, or special Act under this Act, may be defrayed out of the local rate as defined in the schedule to this Act, and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expenses; provided that where such local authority is a rural sanitary authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875.

8. A local authority authorised to supply electricity by any license, order, or special Act may from time to time borrow money on such security, with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans, as are in the schedule to this Act in that behalf mentioned, and the money so borrowed shall be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed, and the accounts of all receipts and expenditure by the local authority in pursuance of this Act, or any license, order, or special Act, shall be subject to such audit as is in the said schedule in that behalf mentioned: Provided always, that any moneys borrowed under this section by the local authority of any

district to which the Local Loans Act, 1875, extends, may, if it is thought fit, be borrowed in manner provided by that Act; and in the construction of the said Act for the purposes of this Act, the expression "prescribed" means prescribed by any conditions imposed by the authority whose consent is required to borrowing under this section.

Where any local authority is authorised by any Act to raise any money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which a local authority may be authorised to borrow under this section may, if it is thought fit, be raised by them by the issue of such stock as aforesaid.

This section shall not apply to the mayor, commonalty, and citizens of the city of London or to the Metropolitan Board of Works, except in so far as the Metropolitan Board of Works may be concerned in the borrowing of any money by any vestry or district board.

9. The undertakers shall on or before the twenty-fifth day of March in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy.

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty-shillings for each day during which such default continues.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act, and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement, construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.

11. Any local authority who have obtained a license, order, or special Act for the supply of electricity, may contract with any company or person for the execution and maintenance

of any works needed for the purposes of such supply, or for the supply of electricity within any area mentioned in such license, order, or special Act, or in any part of such area; but no local authority, company, or person shall by any contract or assignment transfer to any other company or person or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act, or by any license, order, or special Act, without the consent of the Board of Trade.

12. The provisions of the following Acts shall be incorporated with this Act; that is to say,

- (1.) The Lands Clauses Acts, except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and
- (2.) The provisions of the Gasworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and
- (3.) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871.

For the purposes of this Act, in the construction of all the enactments incorporated by this section "the special Act" means this Act inclusive of any license, order, or special Act; and the "promoters" or "undertakers," and "the undertaking" as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Acts, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line, and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable

under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts.

13. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the license, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any license or provisional order, or give any such consent until notice has been given to such authority, company, or person, by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

14. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority, and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

15. Subject to the provisions of this Act and of the license, order, or special Act authorising them to supply electricity, and to any byelaws made under this Act, the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under this Act, on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or

person from any proceeding for any offence which is punishable under any other Act, or under any other Act, so that no person be punished for any offence.

maliciously or fraudulently to be wasted or diverted, electricity shall be punishable accordingly.

the undertakers enter any premises or has been supplied by order to inspect the electric accumulators, fittings, works, or apparatus for the supply of electricity to the Undertakers, and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers, repairing all damage caused by such entry, inspection, or removal.

25. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any license, order, or special Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be.

26. No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878.

The undertakers shall not in the exercise of the powers conferred by this Act, or by any license, order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than

repairs or the laying of connexions with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents not more than twenty-eight nor less than seven clear days before commencing such work shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements either general or special as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents with respect to any requirements so made, shall be determined by arbitration.

In the event of any contravention of or wilful non-compliance with this section by the undertakers or their agents the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the court having cognizance of the case that the immediate execution of the work was required to avoid an accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act, 1878, shall be deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice nevertheless to any operation which the other sections of the said Act would have had if this section had not been enacted.

27. Where any undertakers are authorised by a provisional order or special Act to supply electricity within any area, any local authority within whose jurisdiction such area or any part thereof is situated may, within six months after the expiration of a period of twenty-one years, or such shorter period as is specified in that behalf in the application for the provisional order or in the special Act, from the date of the passing of the Act confirming such provisional order, or of such special Act, and within six months after the expiration of every subsequent period of seven years, or such shorter period as is specified in that behalf in the application for the provisional order or in the special Act, by notice in writing require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be in case of difference determined by arbitration: Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase or of goodwill or of any profits which may or might have been or be made from the undertaking, or of any similar considerations. The Board of Trade may determine any other questions which may arise in relation to such purchase and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act or such provisional order or special Act as aforesaid within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid.

28. Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitration, such matter shall,

except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

Any license or provisional order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, &c., Act, 1874.

29. Where a supply of electricity is authorised in any area by any license, order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any provisional order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand, the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connexion with any such inquiry or order shall be borne and paid by the gas undertakers upon whose application the inquiry or order was made.

30. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

31. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the schedule to this Act annexed, the authority and rate mentioned opposite to that district in the second and third columns of that schedule; and such schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

32. In this Act, unless the context otherwise requires—

The expression “electricity” means electricity, electric current, or any like agency:

The expression “electric line” means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents:

The expression “works” means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act:

The expression “company” means any body of persons corporate or unincorporate:

The expression “Lands Clauses Acts” means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869:

The expression “street” includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act:

The expression “telegram” has the same meaning as in the Telegraph Act, 1869.

33. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals.

34. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament.

35. Nothing in this Act or in any license, order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company,

or person to transmit any telegram or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever, in connexion with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams.

As to Scotland.

36. This Act shall apply to Scotland with the following modifications:

The expression “Lands Clauses Acts” means the Lands Clauses Consolidation (Scotland) Acts, 1845 and 1860.

The expression “simple larceny” means theft.

The expression “felony” means a high crime and offence.

The expression “public purposes” means lighting any street or any place belonging to or subject to the control of any public authority, or any church or place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied.

The expression “local authority” means as regards streets and roads the authority having the control of the streets and roads.

As to Ireland.

37. This Act shall apply to Ireland with the following modifications:

Where the consent of the grand jury of any county to the breaking up of any road is required under this Act, such consent may be signified by the county surveyor; and where it is required under this Act that notice should be given by the Board of Trade to the grand jury of any county, and an opportunity afforded to such grand jury to state objections, such notice may be given to, and such objections may be stated by, the county surveyor on behalf the grand jury:

The expression “Public Health Act, 1875,” means the Public Health (Ireland) Act, 1878.



SCHEDULE.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required by borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
ENGLAND AND WALES.						
The city of London and the liberties thereof.	The Mayor, Commonalty, and Citizens acting by the Commissioners of Sewers.	The consolidated sewers rate.				
Parts of the metropolis which the Metropolitan Board of Works are authorised to light.	The Metropolitan Board of Works.	The consolidated rate.				
Parish mentioned in Schedule A. to the Metropolis Management Act, 1855.	The vestry -	The lighting rate or other fund or rate applicable for lighting.	The local rate as herein defined.	The Metropolitan Board of Works.	Those contained in sections one hundred and eighty-three to one hundred and ninety-one (both inclusive) of the Metropolis Management Act, 1855.	That prescribed by section one hundred and ninety-five of the Metropolis Management Act, 1855.
District mentioned in Schedule B. to the Metropolis Management Act, 1855.	The district board.					

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to lighting under any local Act.	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act.
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875.

NOTES.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health Act, 1875.

(2.) "Borough" means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same.

Districts of Local Authorities.	Description of Local Authority of District set opposite its name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
SCOTLAND.						
Places within the jurisdiction of any town council, and not subject to any such separate jurisdiction as herein-after mentioned.	The town council.	The police or burgh assessment, or rate of the nature of a burgh assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in section eighty-six of the Public Health (Scotland) Act, 1867.	That prescribed by sections seventy-seven and seventy-eight of the General Police and Improvement (Scotland) Act, 1862, provided that the expression "Commissioners" shall include town council.
Places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not subject to such jurisdiction as herein-after mentioned.	The police commissioners or trustees.					
Places within the jurisdiction or limits of any public commissioners or board (other than any of the bodies herein-before mentioned) charged by any local Act with the duty of lighting the district within their jurisdiction or limits with gas.	The commissioners or board.	The gas rates leviable by the commissioners or board.	The local rate as herein defined, and the rates, charges, and other securities provided by the Act.	One of Her Majesty's Principal Secretaries of State.	Those contained in the local Act with respect to the borrowing of money for the purposes thereof.	That prescribed by the local Act.

Districts of Local Authorities.	Description of Local Authority set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions as to borrowing and the Repayment of Loans.	Mode of audit of Accounts of Local Authority.
Any county or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend, and not within the jurisdiction or limits of such public commissioners or board as above mentioned.	The county road board.	The county road assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in sections seventy-five to seventy-nine, both inclusive, of the Roads and Bridges (Scotland) Act, 1878.	That prescribed by section one hundred and twenty of the Roads and Bridges (Scotland) Act, 1878.
Urban sanitary district (1).	The urban sanitary authority (1).	The rate or rates applicable to the general purposes of the Public Health (Ireland) Act, 1878, or any other fund or rate applicable to lighting under any local Act.	IRELAND. The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-seven of the Public Health (Ireland) Act, 1878.	Those contained in sections two hundred and thirty-seven, two hundred and thirty-eight, and two hundred and forty to two hundred and forty-three (both inclusive) of the Public Health (Ireland) Act, 1878.	That prescribed by section two hundred and forty-eight of the Public Health (Ireland) Act, 1878.

NOTE.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health (Ireland) Act, 1878.

have the like effect in every respect as though they had been originally inserted in the license, order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any license, order, or special Act may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal byelaws for further securing such safety; and there may be annexed to any breach of such byelaws such penalties to be recovered in a summary manner as they may think necessary: Provided always, that no such byelaws shall have any force or effect unless and until they have been confirmed by the Board of Trade and published in such manner as the Board of Trade may direct.

7. Any expenses incurred by a local authority under this Act, and not otherwise provided for, including any expenses incurred in connexion with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any license, order, or special Act under this Act, may be defrayed out of the local rate as defined in the schedule to this Act, and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expenses; provided that where such local authority is a rural sanitary authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875.

8. A local authority authorised to supply electricity by any license, order, or special Act may from time to time borrow money on such security, with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans, as are in the schedule to this Act in that behalf mentioned, and the money so borrowed shall be deemed to be borrowed under the enactments subject to the provisions and restrictions of which it is borrowed, and the accounts of all receipts and expenditure by the local authority in pursuance of this Act, or any license, order, or special Act, shall be subject to such audit as is in the said schedule in that behalf mentioned: Provided always, that any moneys borrowed under this section by the local authority of any

district to which the Local Loans Act, 1875, extends, may, if it is thought fit, be borrowed in manner provided by that Act; and in the construction of the said Act for the purposes of this Act, the expression "prescribed" means prescribed by any conditions imposed by the authority whose consent is required to borrowing under this section.

Where any local authority is authorised by any Act to raise any money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which a local authority may be authorised to borrow under this section may, if it is thought fit, be raised by them by the issue of such stock as aforesaid.

This section shall not apply to the mayor, commonalty, and citizens of the city of London or to the Metropolitan Board of Works, except in so far as the Metropolitan Board of Works may be concerned in the borrowing of any money by any vestry or district board.

9. The undertakers shall on or before the twenty-fifth day of March in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy.

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty-shillings for each day during which such default continues.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act, and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands by agreement, construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.

11. Any local authority who have obtained a license, order, or special Act for the supply of electricity, may contract with any company or person for the execution and maintenance

of any works needed for the purposes of such supply, or for the supply of electricity within any area mentioned in such license, order, or special Act, or in any part of such area; but no local authority, company, or person shall by any contract or assignment transfer to any other company or person or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act, or by any license, order, or special Act, without the consent of the Board of Trade.

12. The provisions of the following Acts shall be incorporated with this Act; that is to say,

- (1.) The Lands Clauses Acts, except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and
- (2.) The provisions of the Gasworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes, and with respect to waste or misuse of the gas or injury to the pipes and other works, except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and
- (3.) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871.

For the purposes of this Act, in the construction of all the enactments incorporated by this section "the special Act" means this Act inclusive of any license, order, or special Act; and the "promoters" or "undertakers," and "the undertaking," as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Acts, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Acts, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant electric line, and "works" meant "works" as defined by this Act, and as if "the limits of the special Act" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable

under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts.

13. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the license, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any license or provisional order, or give any such consent until notice has been given to such authority, company, or person, by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto.

14. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority, and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

15. Subject to the provisions of this Act and of the license, order, or special Act authorising them to supply electricity, and to any byelaws made under this Act, the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under this Act, on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or

in case of difference as may be determined in manner prescribed by the license or provisional order authorising the undertakers to supply electricity, or where no such manner is prescribed as may be determined by arbitration, and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local or other public authority, company, or person in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in this section contained with reference to the alteration of the position of any pipes or wires by the undertakers.

16. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal, any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration.

17. In the exercise of the powers in relation to the execution of works given them under this Act, or any license, order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage as may be, and shall make full compensation to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration.

18. The undertakers shall not be entitled to prescribe any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, and any license, order, or special Act is

used: Provided always that no local authority, company, or person shall be at liberty to use any form of lamp or burner or to use the electricity supplied to them for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply of electricity supplied to any other local authority, company, or person by the undertakers, and if any dispute or difference arises between the undertakers and any local authority, company, or person entitled to be supplied with electricity under this Act, or any license, order, or special Act, as to the matters aforesaid, such dispute or difference shall be determined by arbitration.

19. Where a supply of electricity is provided in any part of an area for private purposes, then, except in so far as is otherwise provided by the terms of the license, order, or special Act authorising such supply, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply.

20. The undertakers shall not, in making any agreements for a supply of electricity, show any undue preference to any local authority, company, or person, but, save as aforesaid, they may make such charges for the supply of electricity, as may be agreed upon, not exceeding the limits of price imposed by or in pursuance of the license, order, or special Act authorising them to supply electricity.

21. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid, are fully paid, but no longer, discontinue the supply of electricity to such local authority, company, or person.

22. Any person who unlawfully and maliciously cuts or injures any electric line or work with intent to cut off any supply of electricity shall be guilty of felony, and be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour, for any term not exceeding two years; but nothing in this section shall

exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

23. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of simple larceny and punishable accordingly.

24. Any officer appointed by the undertakers may at all reasonable times enter any premises to which electricity is or has been supplied by the Undertakers, in order to inspect the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the Undertakers, and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers, repairing all damage caused by such entry, inspection, or removal.

25. Where any electric lines, meters, accumulators, fittings, works, or apparatus belonging to the undertakers are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any license, order, or special Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be.

26. No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878.

The undertakers shall not in the exercise of the powers conferred by this Act, or by any license, order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than

repairs or the laying of connexions with mains where the direction of the electric lines so laid down crosses the line of the Postmaster-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents not more than twenty-eight nor less than seven clear days before commencing such work shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements either general or special as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents with respect to any requirements so made, shall be determined by arbitration.

In the event of any contravention of or wilful non-compliance with this section by the undertakers or their agents the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the court having cognizance of the case that the immediate execution of the work was required to avoid an accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act, 1878, shall be deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice nevertheless to any operation which the other sections of the said Act would have had if this section had not been enacted.

27. Where any undertakers are authorised by a provisional order or special Act to supply electricity within any area, any local authority within whose jurisdiction such area or any part thereof is situated may, within six months after the expiration of a period of twenty-one years, or such shorter period as is specified in that behalf in the application for the provisional order or in the special Act, from the date of the passing of the Act confirming such provisional order, or of such special Act, and within six months after the expiration of every subsequent period of seven years, or such shorter period as is specified in that behalf in the application for the provisional order or in the special Act, by notice in writing require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be in case of difference determined by arbitration: Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase or of goodwill or of any profits which may or might have been or be made from the undertaking, or of any similar considerations. The Board of Trade may determine any other questions which may arise in relation to such purchase and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act or such provisional order or special Act as aforesaid within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid.

28. Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitration, such matter shall,

except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

Any license or provisional order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, &c., Act, 1874.

29. Where a supply of electricity is authorised in any area by any license, order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any provisional order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand, the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connexion with any such inquiry or order shall be borne and paid by the gas undertakers upon whose application the inquiry or order was made.

30. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

31. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the schedule to this Act annexed, the authority and rate mentioned opposite to that district in the second and third columns of that schedule; and such schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

32. In this Act, unless the context otherwise requires—

The expression "electricity" means electricity, electric current, or any like agency:

The expression "electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conveying, transmitting, or distributing electricity or electric currents:

The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act:

The expression "company" means any body of persons corporate or unincorporate:

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869:

The expression "street" includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act:

The expression "telegram" has the same meaning as in the Telegraph Act, 1869.

33. Nothing in this Act shall limit or interfere with the rights of any owner, leasee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals.

34. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament.

35. Nothing in this Act or in any license, order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company,

or person to transmit any telegram or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever, in connexion with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams.

As to Scotland.

36. This Act shall apply to Scotland with the following modifications:

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation (Scotland) Acts, 1845 and 1860.

The expression "simple larceny" means theft.

The expression "felony" means a high crime and offence.

The expression "public purposes" means lighting any street or any place belonging to or subject to the control of any public authority, or any church or place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied.

The expression "local authority" means as regards streets and roads the authority having the control of the streets and roads.

As to Ireland.

37. This Act shall apply to Ireland with the following modifications:

Where the consent of the grand jury of any county to the breaking up of any road is required under this Act, such consent may be signified by the county surveyor; and where it is required under this Act that notice should be given by the Board of Trade to the grand jury of any county, and an opportunity afforded to such grand jury to state objections, such notice may be given to, and such objections may be stated by, the county surveyor on behalf the grand jury:

The expression "Public Health Act, 1875," means the Public Health (Ireland) Act, 1878.



SCHEDULE.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
ENGLAND AND WALES.						
The city of London and the liberties thereof.	The Mayor, Commonalty, and Citizens acting by the Commissioners of Sewers.	The consolidated sewers rate.				
Parts of the metropolis which the Metropolitan Board of Works are authorised to light.	The Metropolitan Board of Works.	The consolidated rate.				
Parish mentioned in Schedule A. to the Metropolis Management Act, 1855.	The vestry -	The lighting rate or other fund or rate applicable for lighting.	The local rate as herein defined.	The Metropolitan Board of Works.	Those contained in sections one hundred and eighty-three to one hundred and ninety-one (both inclusive) of the Metropolis Management Act, 1855.	That prescribed by section one hundred and ninety-five of the Metropolis Management Act, 1855.
District mentioned in Schedule B. to the Metropolis Management Act, 1855.	The district board.					

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to lighting under any local Act.	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act.
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875.

NOTES.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health Act, 1875.

(2.) "Borough" means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same.

Districts of Local Authorities.	Description of Local Authority of District set opposite its name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
SCOTLAND.						
Places within the jurisdiction of any town council, and not subject to any such separate jurisdiction as herein-after mentioned.	The town council.	The police or burgh assessment, or rate of the nature of a burgh assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in section eighty-six of the Public Health (Scotland) Act, 1867.	That prescribed by sections seventy - seventy-eight of the General Police and Improvement (Scotland) Act, 1862, provided that the expression "Commissioners" shall include town council.
Places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not subject to such jurisdiction as herein-after mentioned.	The police commissioners or trustees.					
Places within the jurisdiction or limits of any public commissioners or board (other than any of the bodies herein-before mentioned) charged by any local Act with the duty of lighting the district within their jurisdiction or limits with gas.	The commissioners or board.	The gas rates leviable by the commissioners or board.	The local rate as herein defined, and the rates, charges, and other securities provided by the Act.	One of Her Majesty's Principal Secretaries of State.	Those contained in the local Act with respect to the borrowing of money for the purposes thereof.	That prescribed by the local Act.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required by borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of audit of Accounts of Local Authority.
Any county or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend, and not within the jurisdiction or limits of such public commissioners or board as above mentioned.	The county road board.	The county road assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in sections seventy-five to seventy-nine, both inclusive, of the Roads and Bridges (Scotland) Act, 1878.	That prescribed by section one hundred and twenty of the Roads and Bridges (Scotland) Act, 1878.
Urban sanitary district (1).	The urban sanitary authority (1).	The rate or rates applicable to the general purposes of the Public Health (Ireland) Act, 1878, or any other fund or rate applicable to lighting under any local Act.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-seven of the Public Health (Ireland) Act, 1878.	Those contained in sections two hundred and thirty-seven, two hundred and thirty-eight, and two hundred and forty to two hundred and forty-three (both inclusive) of the Public Health (Ireland) Act, 1878.	That prescribed by section two hundred and forty-eight of the Public Health (Ireland) Act, 1878.

IRELAND.

NOTE.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health (Ireland) Act, 1878.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory places or places (1) comprised within the area of supply are payable under the Public Health (Ireland) Act, 1878.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-seven of the Public Health (Ireland) Act, 1878.	Those contained in sections two hundred and thirty-seven, two hundred and thirty-eight, and two hundred and forty to two hundred and forty-three (both inclusive) of the Public Health (Ireland) Act, 1878.	That prescribed by section two hundred and forty-eight of the Public Health (Ireland) Act, 1878.

NOTE.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health (Ireland) Act, 1878.

CHAP. 57.

County Courts (Costs and Salaries) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *9 & 10 Vict. c. 95. s. 91. repealed, and enactment in lieu thereof.*
3. *29 & 30 Vict. c. 14. s. 2. partly repealed.*
4. *Construction of s. 5. of 30 & 31 Vict. c. 142.*
5. *Award of costs.*

An Act to amend the law relating to
Costs and Salaries in County Courts.
(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act is one of the County Courts Acts, and may be cited for all purposes as the County Courts (Costs and Salaries) Act, 1882.

2. So much of section ninety-one of the County Courts Act, 1846, as is still in force is hereby repealed, and the following provisions shall from and after the passing of this Act take effect in lieu thereof, that is to say: No person other than a solicitor of the Supreme Court shall be entitled to have or recover any fee or reward for appearing or acting on behalf of any other party in any proceeding in a county court: Provided always, that nothing in this Act contained shall affect the right of any barrister-at-law to appear or act in any

county court, or of any solicitor of the Supreme Court to recover costs in respect of his employment of a barrister-at-law to appear or act as aforesaid.

3. So much of section two of the County Courts Act, 1866, as limits the salaries and expenses of the persons by whom the accounts of the county courts are to be examined is hereby repealed.

4. Section five of the thirtieth and thirty-first years of the reign of Victoria, chapter one hundred and forty-two, shall be read and construed as if the words "less than" were substituted for the words "not exceeding."

5. Notwithstanding any Act of Parliament or any rule to the contrary, it shall be in the power of the judge of a county court to award costs on the higher scale to the plaintiff on any amount recovered, however small, or to the defendant who successfully defends an action brought for any amount, however small, provided the said judge certify that the action involved some novel or difficult point of law, or that the question litigated was of importance to some class or body of persons or of general or public interest.

CHAP. 58.

Divided Parishes and Poor Law Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

Detached Parts of Parishes.

2. *Detached parts of parishes to form parts of parishes surrounding them.*
3. *Provision for parishes not separately maintaining highways.*
4. *Detached parts with a population exceeding 300 may be made separate parishes.*
5. *Provision as to school districts.*
6. *Extension of 39 & 40 Vict. c. 61. s. 5.*
7. *Interpretation of county.*

Poor Law Amendments.

8. *Power to alter wards for election of guardians in certain cases.*
9. *Adjustment of liabilities in asylum district.*
10. *Provision for separate rate.*
11. *Adjustment of liabilities not required in certain cases.*
12. *Mode of consent by guardians and managers.*
13. *Extension of 25 & 26 Vict. c. 43. s. 1.*
14. *Repeal of 20 Vict. c. 19. s. 2. and 4 & 5 Will. 4. c. 76. s. 18.*

An Act to amend the Divided Parishes and Poor Law Amendment Act, 1876; and for other purposes.

(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Divided Parishes and Poor Law Amendment Act, 1882, and shall be construed as one with the Divided Parishes and Poor Law Amendment Act, 1876, in this Act referred to as the principal Act, and the Acts amending the same.

Detached Parts of Parishes.

2. Where any part of a parish is isolated or detached from the other part or parts of the parish, and is wholly surrounded by another parish, such part shall, from and after the twenty-fifth day of March one thousand eight hundred and eighty-three, be amalgamated with the last-mentioned parish in the same manner and with the same consequences and limitations in every respect, subject nevertheless as herein-after mentioned, as if the amalgamation had been effected by an order of the Local Government Board under the principal Act, and such part shall be deemed to be within the same county as the parish with which it is amalgamated.

Provided as follows:

- (1.) If two or more isolated or detached parts of parishes adjoin each other, and such parts together are wholly surrounded by another parish, the same shall for the purposes of this Act be deemed one isolated or detached part.
- (2.) If any question should arise as to whether part of a parish is isolated or detached from the other part or parts of the parish, or is wholly surrounded by another parish, the Local Government Board may by order determine the question.
- (3.) This section shall not apply to any parish situate wholly or partly in the metropolis.

3. Where the parish with which any such isolated or detached part of a parish as aforesaid becomes amalgamated, under the provisions of this Act, is not a place separately maintaining its own highways, or entitled to return a separate waywarden to a highway board, the Local Government Board may deal with such parish for highway purposes by an order in like manner as they would have been enabled to deal with the same by a supplemental order under section seven of the Poor Law Act, 1879, if the amalgamation had been effected prior to the passing of that Act by an order under the principal Act.

4. If the population of any such isolated or detached part of a parish as aforesaid exceeds three hundred persons, one tenth in number and rateable value of the persons appearing on the rate in force for the time being to be rated to the relief of the poor in respect of property within such part may apply to the Local Government Board, in writing, on or before the first day of December next, to have the same declared to be a separate parish, and the Board may by order either dismiss the application or constitute such part a separate parish from and after a day to be fixed by the order; and if an order is made dismissing the application, section two of this Act shall not take effect with respect to such part until such order is made.

An order constituting a parish under this section shall have the same consequences and may contain the same provisions as if the same were made under the principal Act, but section two of that Act shall not apply to such order.

5. Notwithstanding anything contained in the principal Act, any alteration of an area made by or pursuant to this Act shall extend to alter the constitution of the school districts, unless the Education Department otherwise direct.

6. Section five of the principal Act shall apply to any parish in a highway district, although it may not be a parish for which a waywarden can be elected.

7. For the purposes of the principal Act, and the Acts amending the same, a riding or other division of a county having a separate court of quarter sessions, or for which a separate county treasurer may be appointed, shall be deemed to be a separate county.

Poor Law Amendments.

8. Any wards already formed or hereafter to be formed by the Local Government Board under the Public Health Act, 1872, or the Public Health Act, 1875, for the election of guardians of the poor, and the number of guardians to be elected for such wards respectively, may be altered from time to time by that Board as they may think fit.

9. Where the Local Government Board, by order, under section six of the Metropolitan Poor Act, 1867, have altered, or shall hereafter alter, any district formed under that Act, they may ascertain the proportionate value of the property and the amount of the obligations of every parish or union affected by the change, and may fix the amount to be received, or paid, or secured to be paid by every such parish or union.

10. If, for the purpose of giving effect to any adjustment which the Local Government Board are authorised or required to make under the Poor Law Amendment Act, 1834, or the Acts amending the same, it is necessary that a separate rate should be levied on part of a parish only, the Board may in the order of adjustment direct such rate to be made, and the same shall be assessed, made, allowed, published, collected, and levied in the same manner and by the same persons as if it were a poor rate and extended to the whole parish.

11. It shall not be incumbent on the Local Government Board to make an adjustment under the Poor Law Amendment Act, 1834, or the Acts amending the same, in any case where the circumstances appear to them to render such adjustment inexpedient or unnecessary.

12. Where, under the Poor Law Amendment Act, 1834, or any of the Acts amending the same, the consent in writing of a majority of the guardians of a union or the managers of a school district is required it shall be deemed a sufficient compliance with such requirement if a resolution giving consent is passed at a meeting of the guardians or managers, of which meeting, and of the business to be

transacted thereat, not less than fourteen days notice shall be given to each guardian or manager.

13. The guardians of any union who send any pauper child to a school certified under the Act of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter forty-three, may pay the reasonable expenses incurred in the maintenance, clothing, and education of such child whilst in such school to an amount not exceeding such rate of payment as may be sanctioned by the Local Government Board for pauper children sent to such school, anything contained in the said Act to the contrary notwithstanding.

14. The following enactments are hereby repealed, viz.—

(1.) Section two of the Act of the twentieth year of the reign of Her present Majesty, chapter nineteen, relating to the appointment of overseers for extra-parochial places in certain cases;

(2.) So much of section eighteen of the Poor Law Amendment Act, 1834, as requires copies of the orders of the Poor Law Commissioners to be sealed or stamped with their seal; and

(3.) So much of section six of the Union and Parish Property Act, 1835, and of the schedule to that Act, and so much of section six of the Parish Property and Parish Debts Act, 1842, as relate to the transmission to the Poor Law Commissioners, and the approval, sealing, and registration by such Commissioners of deeds or other instruments, except as regards deeds or instruments executed prior to the date of this Act; and nothing in the said Acts, or in the Poor Law Amendment Act, 1834, or in the Union Loans Act, 1869, or the Acts amending or extending those Acts respectively, shall be deemed to require the approval or registration by the Local Government Board of any such deed or instrument as aforesaid, or of any lease or agreement for lease made or entered into under the authority of those Acts or any of them.

Provided that the guardians or managers, as the case may be, shall keep a register of the securities in respect of all sums borrowed by them, in such form and subject to such regulations as to inspection or otherwise as the Local Government Board may from time to time prescribe.

CHAP. 59.

Educational Endowments (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation of terms.*
2. *Short title.*
3. *Commencement of Act.*

Commissioners.

4. *Appointment of Commissioners.*
5. *Powers of Commissioners.*
6. *Provisions where governing body wholly or partly consists of members of town council, &c.*
7. *Scope of Commission.*

Endowments subject to Commission.

8. *Act not to apply to certain endowments.*
9. *Date of oldest part of endowment to be date of endowment, unless conveniently separable.*
10. *Apportionment of mixed endowments.*
11. *Application to education of non-educational endowments.*
12. *Endowments for apprenticeship fees, maintenance, and clothing to be deemed educational.*

Requisites of Schemes.

13. *Vested interests.*
14. *Interests acquired after passing of Act.*
15. *Interests of particular classes to be kept in view.*
16. *Selection of beneficiaries.*
17. *Benefits to be extended to girls.*
18. *Tenure of office of teachers, &c.*
19. *Inspection and audit.*
20. *Provision for future alteration of schemes.*

Procedure.

21. *Preliminary inquiry.*
22. *Governing body may lodge draft scheme.*
23. *Printing and publication of draft schemes.*
24. *Governing body may lodge objections.*
25. *As to framing of schemes.*
26. *Approval of Scotch Education Department to schemes.*
27. *Proceedings where scheme is remitted.*
28. *Quorum of Commissioners.*
29. *Quorum of governing body.*
30. *Special case to Court of Session on questions of law.*
31. *Deliberance of Court of Session final. Disposal of questions of expenses.*
32. *Scheme to be approved by Order in Council. When to be laid before Parliament.*
33. *Provision as to schemes for endowments under 50l. annual value.*
34. *Amendment of schemes.*
35. *Evidence of scheme.*
36. *Inquiry by assistant commissioner.*
37. *Power to cite witnesses, &c.*
38. *As to report of assistant commissioner.*
39. *Cost of publishing scheme, &c.*

Miscellaneous.

- 40. *Service of notices.*
- 41. *Service by post.*
- 42. *Signature and evidence of documents of the Scotch Education Department.*
- 43. *Annual reports.*
- 44. *Returns, &c. by governing body.*
- 45. *Inspection and audit where endowments regulated under former Acts.*
- 46. *Provision for default of governing body.*
- 47. *Duration of powers of making schemes.*

An Act to reorganise the Educational Endowments of Scotland.

(18th August 1882.)

WHEREAS it is desirable to extend the usefulness of educational endowments in Scotland, and to carry out more fully than is done at present the spirit of the founders' intentions, and so far as may be to make an adequate portion of such endowments available for affording to boys and girls of promise opportunities for obtaining higher education of the kind best suited to aid their advancement in life:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. For the purposes of this Act, unless the context otherwise requires,—

"Educational endowment" shall mean any property, heritable or moveable, dedicated to charitable uses, and which has been applied or is applicable in whole or in part, whether by the declared intention of the founder or the consent of the governing body or by custom or otherwise, to educational purposes, but shall not, except with the consent of the governing body, include the funds, whether capital or revenue, of any incorporation or society contributed or paid by the members of such incorporation or society by way of entry moneys or other fixed or stated payments, nor burgess fines paid to any such incorporation or corporate society except as herein-after provided:

"Governing body" shall mean the managers, governors, or trustees of any endowment or other persons having the administration of the revenues thereof:

"Burgh" shall mean royal or parliamentary burgh:

"Scotch Education Department" shall mean the Lords of the Committee of the Privy Council on Education in Scotland:

"The Commissioners" shall mean the Commissioners appointed under this Act, and "Commissioner" shall mean one of such Commissioners:

"The Court of Session" shall mean either division of the Inner House of the said Court.

2. This Act may be cited as the Educational Endowments (Scotland) Act, 1882.

3: This Act shall, except as herein-after otherwise provided, come into operation on the first day of November one thousand eight hundred and eighty-two, which date is in this Act referred to as the commencement of this Act.

Commissioners.

4. For the purposes of this Act it shall be lawful for Her Majesty to appoint seven Commissioners, and to appoint a secretary to the Commissioners, and as vacancies occur to supply such vacancies. The Commissioners and secretary shall hold office during Her Majesty's pleasure. The Commissioners of Her Majesty's Treasury may assign such salaries as they think fit to the said secretary, and to such assistant commissioners, officers, and clerks as may be appointed by the Commissioners during their pleasure, with the approval of the Commissioners of the Treasury.

Her Majesty may from time to time appoint one of the Commissioners to be chairman.

The Commissioners of Public Works shall provide a suitable office in Edinburgh in which the business of the Commissioners may be transacted.

The Commissioners shall be paid, on scales to be approved by the Treasury, the personal and travelling expenses incurred by them on the business of the Commission. The assistant commissioners, officers, and clerks shall be paid, on scales to be approved by the Treasury, the personal and travelling expenses incurred by them when employed on the business of the Commission out of Edinburgh.

All the aforesaid salaries and personal, travelling, or office expenses, and also any expenses incurred by the Scotch Education Department under this Act, shall be paid out of moneys to be voted by Parliament.

The Commissioners shall receive no payment except for such personal and travelling expenses as aforesaid.

The provisions of this section shall have effect from and after the passing of this Act.

5. Subject to the provisions herein-after contained the Commissioners shall have power to prepare drafts of schemes for the future government and management of educational endowments, which schemes may provide for altering the conditions and provisions of such endowments, including the powers of investing the funds thereof, or amalgamating, combining, or dividing such endowments, or altering the constitution of the governing bodies thereof, or uniting two or more existing governing bodies, or establishing new governing bodies with such powers as shall seem necessary, and to insert in such schemes clauses incorporating the governing bodies, whether old or new.

6.—(1.) Where the governing body, or a majority of the governing body, of any educational endowment as at present constituted consists of persons deriving their qualification as members thereof, either directly or indirectly, from their election to be members of the town council of any burgh or of any other public body, provision shall be made in any scheme under this Act relating to such endowment that not less than two thirds of the governing body thereof as altered by such scheme shall consist of persons elected by such town council or other public body aforesaid, or partly and in such proportion as the Commissioners shall determine by such town council or other public body aforesaid, and partly by such school board or school boards as the Commissioners, having regard to the locality or localities interested in such endowment, shall determine.

(2.) Where the governing body of any educational endowment as at present constituted consists to the extent of one half or less than one half of persons deriving their qualification as members thereof, either directly or indirectly, from their election to be members of the town council of any burgh or other public body, provision shall be made in any scheme under this Act relating to such endowment that the governing body thereof as altered by such scheme shall consist to such extent, being not less than the existing proportion on the governing body of persons

deriving their qualification as aforesaid, as the Commissioners shall determine of persons elected by such town council or other public body aforesaid, or partly by such town council or other public body aforesaid, and partly by such school board or school boards as the Commissioners, having regard to the locality or localities interested in such endowment, shall determine.

(3.) Where the governing body of any educational endowment as at present constituted includes no persons deriving their qualification as members thereof, either directly or indirectly, from their election to be members of the town council of any burgh or of any other public body, provision shall be made in any scheme under this Act relating to such endowment that the governing body thereof as altered by such scheme shall consist to such extent as the Commissioners shall determine of persons elected by such town council or school board or other public body as the Commissioners, having regard to the locality or localities interested in such endowment, shall determine: Provided that this subsection shall not apply where its application would in the judgment of the Commissioners be inconsistent with the intentions of the founder or with the purposes of the endowment.

7. Subject to the provisions of this Act it shall be the duty of the Commissioners in reorganizing as aforesaid educational endowments to have special regard to making provision for secondary or higher or technical education in public schools or otherwise in those localities to which the endowments severally belong, or in such manner as to secure to the inhabitants of those localities the benefit of such endowments, and, if the Commissioners think fit, they may provide for the establishing or the aiding of industrial museums and libraries: Provided that nothing in this Act contained shall be taken to compel the Commissioners to restrict any bursary, exhibition, scholarship, or other educational benefit attached to or tenable at any educational institution to the children of persons resident in the locality where that institution exists.

Endowments subject to Commission.

8. This Act shall not apply—

(1.) to any educational endowment given either by present gift made subsequently to the passing of the Education (Scotland) Act, 1872, or by the will of a testator who died subsequently to the passing of the said Act;

(2.) to any endowment belonging to, or

administered by, or in the gift of any of the universities of Scotland, or any of the colleges of such universities; or

- (3.) to any endowment solely or mainly applicable or applied for the purposes of theological instruction or belonging to any theological institution,

unless the founder or the governing body of such educational endowment, or the senatus academicus of such university respectively, shall intimate in writing to the Commissioners their consent that such endowment shall be dealt with under this Act.

9. Where part of an endowment has been given before the passing of the Education (Scotland) Act, 1872, and another part has been given subsequently to the passing of the said Act, and the two portions cannot in the opinion of the Commissioners be conveniently separated from each other, the date of the older part of the endowment shall be held to be the date of the endowment.

10. Where any part of an endowment is an educational endowment within the meaning of this Act, and part of it is applicable or applied to other charitable purposes, the scheme shall be in conformity with the following provisions (except so far as the governing body of such endowment assent to the scheme departing therefrom); that is to say,

- (1.) The proportion of the endowment or annual income for the time being derived therefrom which is applicable to such other charitable uses shall not be diverted by the scheme from such uses unless in the opinion of the Commissioners—

(a) there are no persons who are entitled to benefit out of such part of the endowment; or

(b) the purposes of such part of the endowment have failed altogether; or

(c) such purposes have become insignificant in comparison with the magnitude of such part of the endowment; or

(d) such purposes have become prejudicial to the public welfare:

- (2.) The proportion of the endowment or annual income for the time being so applicable to such other charitable uses shall be deemed to be the proportion which, in the opinion of the Commissioners, is the proportion which has according to the average of such number of years as the Commissioners shall determine been appropriated as regards capital or applied as regards income to such uses, or if that proportion differs from the proportion which ought to

have been so appropriated or applied according to the express directions of the instrument of foundation or the decree of any competent court or the statutes or regulations governing such endowment, the proportion applicable to such other charitable uses shall be the proportion which ought, according to the express directions of such instrument, or such decree or such statutes or regulations, to have been appropriated or applied to such other charitable uses:

- (3.) If the proportion applicable to other charitable uses amounts to or exceeds one half of the whole of the endowment, the governing body of such endowment existing at the date of the scheme shall, so far as regards its non-educational purposes, remain unaltered by the scheme:

- (4.) Where the governing body remains so unaltered, that body shall pay or apply for educational purposes such proportion as under the former provisions of this section is applicable to those purposes, or such less sum as may be fixed by the Commissioners:

- (5.) When any portion of the endowment or the annual income of such portion has been accumulated and not applied to any purpose, the Commissioners shall determine whether and in what proportion such portion or income is to be considered for the purposes of this section as having been appropriated or applied for educational purposes or for other charitable uses.

Subject to the foregoing provisions of this section, the Commissioners shall have power by any scheme to deal with such endowment, and with the governing body thereof, in the same manner in all respects as if the whole of it were an educational endowment.

11. Any governing body having an endowment or fund which is not an educational endowment within the meaning of this Act, if there are no persons who are entitled to benefit out of the endowment, or if the purposes of the endowment have failed altogether, or have become obsolete or useless, or are otherwise sufficiently provided for, or are insignificant in comparison with the magnitude of the endowment, or are, in the opinion of such governing body, not substantially beneficial to the class of persons for whom such endowment was originally intended, or if it has been found impossible, either from the inadequacy of the endowment, or the impracticable character of the founders' intentions, to carry these intentions into effect, may intimate in writing to the Commissioners their assent to the endowment being deemed to be,

and thereafter such endowment may be dealt with in all respects as if it were, an educational endowment.

12. For the purposes and subject to the provisions of this Act endowments for the payment of apprenticeship fees, or for the advancement in life, or for the maintenance or clothing, or otherwise for the benefit of poor children, and the funds and property of the Society in Scotland for Propagating Christian Knowledge so far as applicable or applied to educational purposes shall be deemed to be and may be dealt with as educational endowments.

Requisites of Schemes.

13. In framing schemes the Commissioners shall save or shall make due compensation for the vested interests of individuals holding any office, place, employment, pension, compensation allowance, bursary, or emolument under or arising out of the educational or other endowment at the date of the passing of this Act, and shall provide that no funds now applied in terms of the founders' directions to free elementary education shall be diverted to any other purpose, except to the extent to which such funds are manifestly in excess of the requirements for the purpose of free elementary education of the localities to which they belong.

"Elementary education" shall mean such education as may be given in the State-aided schools of Scotland pursuant to the provisions of the Education (Scotland) Act, 1872, and in terms of the Minutes of the Scotch Education Department in force for the time being, with respect to the administration of the parliamentary grant for public education.

14. Every interest, right, privilege, or preference which any person may acquire after the passing of this Act, in or relative to any educational endowment, or in the governing body thereof, or as member of any such governing body, or in or relative to any office, place, employment, pension, compensation allowance, bursary, or emolument in the gift of any such governing body, shall be subject to the provisions of any scheme made under this Act; and the governing body of an educational endowment shall not, during the continuance of the power of making schemes under this Act, begin to build, rebuild, or enlarge any school buildings, or teachers' residences, or buildings connected therewith, except with the written consent of the Commissioners, or under the directions of such a scheme, but this provision shall not prevent them from continuing any works begun before

the passing of this Act, or from doing anything necessary for the repair or maintenance of buildings or residences existing at the passing of this Act.

15. In framing schemes it shall be the duty of the Commissioners, with respect alike to the constitution of the governing body and to educational provisions, to have regard to the spirit of founders' intentions, and in every scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons is entitled, whether as inhabitants of a particular area or as belonging to a particular class in life or otherwise, they shall have regard to the educational interests of such class of persons: Provided always, that where the founder of any educational endowment has expressly provided for the education of children belonging to the poorer classes, either generally or within a particular area, or otherwise for their benefit, such endowment for such education or otherwise for their benefit shall continue, so far as requisite, to be applied for the benefit of such children.

16. In framing schemes the Commissioners shall provide that in making a selection from amongst those eligible for the benefits of any educational endowment, due regard shall be paid to merit as ascertained by examination, or in such other manner as the Commissioners shall determine.

17. In framing schemes provisions shall be made, so far as can be equitably arranged and as the circumstances of each particular locality require, for extending to both sexes the benefits of endowments.

18. In every scheme the Commissioners shall provide for the dismissal at pleasure of every officer in the employment of the governing body and of every teacher and officer in the endowed school or schools to which the scheme relates, including the principal teacher or teachers, with or without a power of appeal in such cases and to such authority as to the Commissioners may seem expedient. A scheme may provide for the removal of any religious tests or qualifications applicable to teachers.

19. Every scheme shall provide for the periodical inspection of any school sharing in any endowment, and for the periodical audit of the accounts of any endowment dealt with by the scheme, in such manner as the Scotch Education Department may from time to time prescribe. The cost of such audit and, except in the case of public or State-aided schools,

the cost of such inspection shall be paid out of the funds of the endowment to which the scheme relates.

20. In any scheme the Commissioners may provide for the alteration of the scheme from time to time by the Court of Session upon application made with the consent of the Scotch Education Department by the governing body or any party interested, provided such alteration shall not be contrary to anything contained in this Act; and the governing body constituted under any provisional order passed in terms of the Endowed Institutions (Scotland) Act, or the Endowed Institutions (Scotland) Act, 1878, with consent of the Scotch Education Department, may apply to the Court for the alteration of any such order from time to time as such governing body may deem necessary.

Procedure.

21. Before preparing the draft of a scheme for any endowment or endowments the Commissioners may make such public examination or inquiry as they think proper, and shall give the governing body or governing bodies an opportunity of being heard.

22. Any governing body or any governing bodies jointly may within two months after the commencement of this Act give notice in writing of their intention to submit a draft scheme for the consideration of the Commissioners, and if after such notice they submit such a scheme within four months after the commencement of this Act the Commissioners shall take it into consideration before preparing their scheme.

23. When the Commissioners have prepared the draft of a scheme they shall cause it to be printed, and printed copies of it to be sent to the governing body or governing bodies of the endowment or endowments to which it relates, and shall also cause the draft, or a proper abstract thereof, to be published in such manner as they think sufficient for giving information to all persons interested.

24. During two months after the first publication of the draft of a scheme the Commissioners shall receive any objections made to them in writing by any public body or persons interested respecting such scheme, and any amendments proposed thereon, and at any time after the expiration of such two months the Commissioners, if they think fit, may hold an inquiry, or they may refer the draft of the scheme, and the amendments proposed thereon, to an assistant commissioner, and direct him

to hold a local public inquiry concerning the subject-matter of such scheme.

25. As soon as may be after the expiration of the said two months, or the holding of such inquiry by the Commissioners, or the receipt by the Commissioners of the report of the assistant commissioner on the local inquiry held by him (as the case may be), the Commissioners shall proceed to consider any objections made to them in writing respecting the draft scheme, and any amendments proposed thereon, and the report (if any), and thereupon they shall, if they think fit, frame a scheme in such form as they think expedient, and submit it for the approval of the Scotch Education Department, provided that where a scheme has been prepared and submitted in pursuance of this Act to the Commissioners, before the Commissioners have prepared the draft of a scheme, the Commissioners shall, if requested by the governing body who submitted it, submit such scheme with their own to the Scotch Education Department.

26. The Scotch Education Department, as soon as a scheme is submitted to them, shall, before approving the same, cause the scheme, or a proper abstract thereof, to be published in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during two months after the first publication of such notice the Scotch Education Department will receive any objections made to them in writing by any public body or persons interested respecting such scheme.

After the expiration of the said two months, unless a case has been submitted to the Court of Session within the time and in the manner herein-after provided, the Scotch Education Department may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the Commissioners, and if they remit the scheme with a declaration the provisions contained in the immediately succeeding section shall apply.

The Scotch Education Department as soon as they approve a scheme shall forthwith, in such manner as they think sufficient for giving information to all persons interested, publish a notice that the scheme has been approved by them, and that unless within two months after the first publication of such notice a petition is presented to the Scotch Education Department as in this section mentioned, such scheme may be approved by Her Majesty by an Order in Council without being laid before Parliament.

During the said two months a petition

praying that the scheme may be laid before Parliament may be presented to the Scotch Education Department by the governing body of the endowment to which the scheme relates, or by the town council of any burgh directly affected by the scheme, or by the school board, or by any ratepayers (not less than twenty) of any burgh or parish or place directly affected by the scheme, or by any person or persons having a vested interest in the endowment or any part of it.

27. Where a scheme is remitted with a declaration the Scotch Education Department shall transmit to the Commissioners any objections made to them in writing respecting such scheme, and the Commissioners may thereupon proceed to prepare an amended scheme and may submit the same for the approval of the Scotch Education Department in the same manner and subject to the same provisions as are in this Act provided in the case of the approval of a scheme, and so on from time to time as often as occasion may require.

28. A scheme of the Commissioners shall not be submitted to the Scotch Education Department unless a majority of the Commissioners for the time being have signified in writing their approval of such scheme, but in all other respects three Commissioners may act under this Act.

29. The majority of members of a governing body who are present at a meeting of their body duly constituted shall have power to do anything that may be required to be done by a governing body for the purposes of this Act: Provided that this power shall be in addition to and not in restraint of any power which any meeting of such governing body may have independently of this Act.

30.—

- (1.) If the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected by such scheme, feel aggrieved by the scheme on the ground of the scheme being one which is not within the scope of, or made in conformity with this Act, or
- (2.) If any person, holding any office, place, employment, pension, compensation allowance, bursary, or emolument under or arising out of an endowment dealt with by the scheme, feel aggrieved by the scheme on the ground that it does not save or make due compensation, as required by this Act, for his vested interests,—

such governing body, person, or body corporate may, within one month after the first publication of the scheme or amended scheme, submit a case to the Court of Session, to which the Commissioners shall and any others directly interested may be parties, for the opinion of the said Court on the question or questions therein stated, and if the Court is of opinion that the scheme is contrary to law on any of the grounds in this section mentioned, the Scotch Education Department shall not approve thereof, but they may, if they think fit, remit the same to the Commissioners with a declaration as herein-before provided.

Subject to the provisions of the immediately succeeding section, a case submitted under this section shall be framed, lodged, amended, heard, and otherwise dealt with in the same manner, as nearly as may be, as a special case presented in terms of the sixty-third section of the Court of Session Act, 1868.

31. In any proceeding before the Court of Session authorised by this Act, the judgment or deliverance of the Court shall be final and not subject to review; and the Court shall dispose of all questions of expenses, and may, if they think fit, direct the expenses or any part thereof (including the expenses of the Commissioners) to be paid out of the funds of the educational endowment to which the proceeding relates: Provided always, that it shall not be lawful for the Court to find the Commissioners liable in expenses.

32. If at the expiration of the time for a petition to the Scotch Education Department praying that a scheme be laid before Parliament no such petition has been presented, it shall be lawful for Her Majesty, by Order in Council, to declare her approbation of such scheme without the same being laid before Parliament.

If any such petition has been presented, the Scotch Education Department shall, as soon as may be, cause the scheme to be laid before both Houses of Parliament; and after it has lain two months before Parliament, then, unless within such two months an address has been presented by one or other of the said Houses praying Her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for Her Majesty by Order in Council to declare her approbation of such scheme or any part thereof, to which such address does not relate.

A scheme when approved by Her Majesty in Council shall have full operation and effect from the date of such Order in Council, in the same manner as if it had been enacted in this Act; and thereupon every Act of Parliament.

letters patent, statute, deed, instrument, trust, or direction relating to the subject-matter of the scheme, so far as inconsistent with the provisions thereof, shall be repealed and abrogated.

33. In the case of endowments belonging to any State-aided school or to any public school under the Education (Scotland) Acts, 1872 and 1878, of less annual value than fifty pounds, the procedure herein-before prescribed shall not apply, if the governing body of such endowment or the school board, as the case may be, frame and submit to the Scotch Education Department a scheme respecting such endowment.

The Scotch Education Department may approve such scheme with or without any modifications as they think fit.

In framing and approving such scheme the same powers may be exercised, and subject to the same conditions, as nearly as may be, as in the case of any scheme under this Act; and such scheme, when approved by the Scotch Education Department, shall have effect as if it were a scheme approved by Order in Council under this Act.

34. Schemes may be from time to time framed and approved for amending any scheme approved under this Act, and all the provisions of this Act relative to an original scheme shall apply also to an amending scheme, *mutatis mutandis*.

35. The Order in Council approving a scheme shall be conclusive evidence that such scheme was within the scope of and made in conformity with this Act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever.

36. Where any assistant commissioner holds a local public inquiry under this Act, he shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood of the place where the endowment or endowments to which the scheme relates is situate or administered, and shall thereat take and receive any evidence, oral or documentary, offered, or which may have been called for or produced under the powers contained in the immediately succeeding section, and shall hear and inquire into any objections respecting the scheme or the endowment or endowments, with power from time to time to adjourn any sitting.

Notice shall be published in such manner as the Commissioners direct of every such sitting (except an adjourned sitting) fourteen days at least before the holding thereof.

37. In the execution of this Act the Commissioners shall have the same powers as a judge of the Court of Session with regard to the citation and examination of witnesses and the recovery and inspection of documents, and it shall not be necessary that any warrant of citation or order shall be signed by more than one Commissioner, and if any warrant or order of the Commissioners in exercise of the said powers is not obeyed, a judge of the Court of Session may on summary application by the Commissioners grant a second warrant of citation and diligence in ordinary form, or make such other order as may be necessary.

This section shall authorise the citation and examination of witnesses and the recovery and inspection of documents before an assistant commissioner; and any assistant commissioner may administer an oath or affirmation, as the case may be, to any witness or haver.

38. The assistant commissioner who holds a local inquiry shall make a report in writing to the Commissioners, setting forth the result of the inquiry, and whether in his opinion the draft scheme referred to him should be approved with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections, if any, made on the inquiry and his opinion thereon.

39. The cost of publishing and circulating any draft scheme, or scheme or any abstract thereof, under this Act, shall be paid out of the funds of the endowment or endowments to which the same relates. Provided that if the Scotch Education Department or the Commissioners cause any draft scheme or scheme or abstract thereof to be published in the Edinburgh Gazette no fees shall be exigible in respect of such publication.

Miscellaneous.

40. Notices and documents required to be served on or sent to a governing body for the purposes of this Act may be served or sent by being left at the office, if any, of such governing body, or being served on or sent to the chairman, secretary, clerk, or other officer of such body, or if there is no office, chairman, secretary, clerk, or officer, or none known to the Commissioners after reasonable inquiry, by being served on or sent to the principal teacher of the endowed school, if any, under such governing body.

41. Notices and documents required to be served or sent for the purposes of this Act may be served or sent by post, and shall be deemed to have been served and received at

the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notices or documents was properly addressed and put into the post office.

42. Any scheme, declaration, minute, notice, or other document for the purposes of this Act, if purporting to be signed by a secretary or assistant secretary of the Scotch Education Department, shall, unless the contrary is proved, be deemed to have been so signed and to have been approved or made, as the case may be, by the said Department.

43. The Commissioners shall in every year make to the Scotch Education Department a report of their proceedings under this Act during the preceding year, and the Scotch Education Department shall cause such report to be laid with all convenient speed before both Houses of Parliament.

44. Every governing body shall make such reports and returns and give to the Commissioners such information as to the funds, estates, property, and income under the control of the governing body as the Commissioners may from time to time require.

Every governing body shall make such reports and returns and give such information to the Scotch Education Department as the Department may from time to time require.

45. The accounts of every endowment which has been regulated, in whole or in part, by a Provisional Order made and confirmed pursuant to the provisions of the Endowed Institutions (Scotland) Act, or the Endowed Institu-

tions (Scotland) Act, 1878, shall be periodically audited, and any school sharing in such endowment shall be periodically inspected, in such manner as the Scotch Education Department may from time to time prescribe. The cost of such audit, and, except in the case of public or State-aided schools, the cost of such inspection shall be paid out of the funds of the endowment to which the Provisional Order relates.

46. If the governing body of any educational endowment fail to give effect to the provisions of any scheme approved under this Act, or of any Provisional Order made and confirmed under the Endowed Institutions (Scotland) Act or the Endowed Institutions (Scotland) Act, 1878, it shall be lawful for the Scotch Education Department, upon the application of the town council of any burgh directly affected by such scheme or Provisional Order, or of the school board, or of any ratepayers (not less than twenty) of any burgh, or parish, or place directly affected thereby, or of any person or persons having a vested interest in the endowment or any part of it, and after such inquiry as they shall think proper, to send a requisition to such governing body, requiring them to give effect to the provisions of the scheme or Provisional Order, and the governing body shall comply with the said requisition without undue delay, and, if they fail, may be summarily compelled to do so by the Court of Session, on a petition and complaint at the instance of the Lord Advocate.

47. The powers of making and approving of a scheme under this Act shall not, unless continued by Parliament, be exercised after the thirty-first of December one thousand eight hundred and eighty-seven.

CHAP. 60.

Labourers Cottages and Allotments (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
 2. *Interpretation of terms.*
 3. *Power to Land Commission where agreement and declaration as to fair rent of holding is filed, to make an order as to the accommodation of the labourers employed on the holding.*
 4. *Penalty for non-compliance with order.*
 5. *Power to Land Commission to relieve from penalties.*
 6. *Construction of Act.*
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An Act to amend and extend the provisions of the Land Law (Ireland) Act, 1881, relating to Labourers Cottages and Allotments.

(18th August 1882.)

WHEREAS it is expedient to amend and extend the provisions relating to labourers cottages and allotments of the Land Law (Ireland) Act, 1881:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Labourers Cottages and Allotments (Ireland) Act, 1882.

2. In this Act the expression "the principal Act" means the Land Law (Ireland) Act, 1881, and the several words and expressions to which meanings are assigned by that Act shall have the same respective meanings in this Act unless there be something in the context repugnant thereto.

3. Where under section eight of the principal Act the landlord and tenant of any holding have agreed and declared, or shall agree and declare, by writing under their hands, what is the fair rent of the holding, and such agreement and declaration has been or shall be filed in Court, the Land Commission may at any time within six months from the passing of this Act, or within twelve months from the date of the filing of such declaration and agreement, whichever shall last happen, order the tenant of such holding for the accommodation of the labourers employed thereon to improve any existing cottage or cottages, or build any new cottage or cottages, or assign to any such cottage an allotment not exceeding

half an acre, and may by such order fix the terms as to rent and otherwise on which such accommodation is to be provided, and any such order may be made on the application of the landlord, or of the tenant of the holding, or of any labourer bona fide employed and required for the cultivation thereof.

4. Where an order shall be made under this Act, or has been made or is made under section nineteen of the principal Act, for providing accommodation for the labourers employed on any holding, and such order has not been complied with within six months from the date of such order, or six months from the passing of this Act, whichever shall last happen, the person failing to comply with such order shall be liable thenceforth to a penalty of one pound for every week during which such order is not complied with, and such penalty shall be recoverable in a summary manner before two or more justices in petty sessions in manner provided by the Petty Sessions (Ireland) Act, 1851, upon the complaint of any labourer employed on the holding, and in whose favour such order has been or shall have been made, and the justices shall award such penalty to the guardians of the poor of the union within which the holding is situate to be applied in aid of the poor rate of such union.

5. Any person who has incurred any penalty under the provisions of this Act may apply to the Land Commission for relief from the same, and the Land Commission may relieve him from the whole or part of such penalty on such terms as to compliance with the order and as to costs or otherwise as the Land Commission thinks fit, and such relief may be granted notwithstanding that an order has been made at petty session for the payment of the penalty.

6. This Act and the principal Act shall be read together and construed as one Act.

CHAP. 61.

Bills of Exchange Act, 1882.

ABSTRACT OF THE ENACTMENTS.

PART I.

PRELIMINARY.

1. *Short title.*
 2. *Interpretation of terms.*
-

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. *Bill of exchange defined.*
4. *Inland and foreign bills.*
5. *Effect where different parties to bill are the same person.*
6. *Address to drawee.*
7. *Certainty required as to payee.*
8. *What bills are negotiable.*
9. *Sum payable.*
10. *Bill payable on demand.*
11. *Bill payable at a future time.*
12. *Omission of date in bill payable after date.*
13. *Ante-dating and post-dating.*
14. *Computation of time of payment.*
15. *Case of need.*
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17. *Definition and requisites of acceptance.*
18. *Time for acceptance.*
19. *General and qualified acceptances.*
20. *Inchoate instruments.*
21. *Delivery.*

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22. *Capacity of parties.*
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24. *Forged or unauthorised signature.*
25. *Procurator signatures.*
26. *Person signing as agent or in representative capacity.*

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27. *Value and holder for value.*
28. *Accommodation bill or party.*
29. *Holder in due course.*
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33. *Conditional indorsement.*
34. *Indorsement in blank and special indorsement.*
35. *Restrictive indorsement.*
36. *Negotiation of overdue or dishonoured bill.*
37. *Negotiation of bill to party already liable thereon.*
38. *Rights of the holder.*

General duties of the Holder.

39. *When presentment for acceptance is necessary.*
40. *Time for presenting bill payable after sight.*
41. *Rules as to presentment for acceptance, and excuses for non-presentment.*
42. *Non-acceptance.*
43. *Dishonour by non-acceptance and its consequences.*
44. *Duties as to qualified acceptances.*
45. *Rules as to presentment for payment.*
46. *Excuses for delay or non-presentment for payment.*
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48. *Notice of dishonour and effect of non-notice.*
49. *Rules as to notice of dishonour.*

- 50. *Excuses for non-notice and delay.*
- 51. *Noting or protest of bill.*
- 52. *Duties of holder as regards drawee or acceptor.*

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- 57. *Measure of damages against parties to dishonoured bill.*
- 58. *Transferor by delivery and transferee.*

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- 61. *Acceptor the holder at maturity.*
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- 97. *Savings.*
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- 100. *Parole evidence allowed in certain judicial proceedings in Scotland.*

SCHEDULES.

An Act to codify the law relating to
Bills of Exchange, Cheques, and
Promissory Notes.

(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

1. This Act may be cited as the Bills of Exchange Act, 1882.

2. In this Act, unless the context otherwise requires,—

- "Acceptance" means an acceptance completed by delivery or notification.
- "Action" includes counter claim and set off.
- "Banker" includes a body of persons whether incorporated or not who carry on the business of banking.
- "Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. (1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable

future time a sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(a.) That it is not dated;

(b.) That it does not specify the value given, or that any value has been given therefor;

(c.) That it does not specify the place where it is drawn or the place where it is payable.

4. (1.) An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British Islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

5. (1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

6. (1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

7. (1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8. (1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

9. (1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a.) With interest.

(b.) By stated instalments.

(c.) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(d.) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

10. (1.) A bill is payable on demand—

(a.) Which is expressed to be payable on demand, or at sight, or on presentation;

or

(b.) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed

when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

- (1.) At a fixed period after date or sight.
- (2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

13. (1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:

- (1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(a.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case herein-after provided for, due and payable on the preceding business day;

(b.) When the last day of grace is a bank holiday (other than Christmas

Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day.

- (2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.
- (4.) The term "month" in a bill means calendar month.

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

- (1.) Negating or limiting his own liability to the holder:
- (2.) Waiving as regards himself some or all of the holder's duties.

17. (1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

- (a.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.
- (b.) It must not express that the drawee will perform his promise by any other means than the payment of money.

18. A bill may be accepted—

- (1.) Before it has been signed by the drawer, or while otherwise incomplete:
- (2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:
- (3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder:

in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

19. (1.) An acceptance is either (a) general or (b) qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(a.) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(b.) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(c.) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

(d.) qualified as to time:

(e.) the acceptance of some one or more of the drawees, but not of all.

20. (1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

21. (1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written

on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a.) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(b.) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.

22. (1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be

acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

26. (1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill.

27. (1.) Valuable consideration for a bill may be constituted by—

(a.) Any consideration sufficient to support a simple contract;

(b.) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

28. (1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

29. (1.) A holder in due course is a holder who has taken a bill, complete and regular on

the face of it, under the following conditions; namely,

(a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

30. (1.) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2.) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

31. (1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

- (1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself.

- (2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

- (3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one endorsing has authority to endorse for the others.

- (4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

- (5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

- (6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

34. (1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35. (1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay "D. or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

36. (1.) Where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) A bill payable on demand is deemed to be overdue within the meaning and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

38. The rights and powers of the holder of a bill are as follows:

- (1.) He may sue on the bill in his own name:

- (2.) Where he is a holder in due course, he

holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

- (3.) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General duties of the Holder.

39. (1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40. (1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41. (1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:

- (a.) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:
- (b.) Where a bill is addressed to two or more drawees, who are not partners, present-

ment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.

(c.) Where the drawee is dead presentment may be made to his personal representative:

(d.) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

(e.) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(a.) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill:

(b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(c.) Where although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42. (1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

43. (1.) A bill is dishonoured by non-acceptance—

(a.) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(b.) When presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

44. (1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not

apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

- (1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
- (4.) A bill is presented at the proper place:—
 - (a.) Where a place of payment is specified in the bill and the bill is there presented.
 - (b.) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
 - (c.) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
 - (d.) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.
- (5.) Where a bill is presented at the proper place, and after the exercise of reasonable

diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

- (6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

46. (1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with,—

- (a.) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

- (b.) Where the drawee is a fictitious person.
- (c.) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
- (d.) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
- (e.) By waiver of presentment, express or implied.

47.—(1.) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

48. Subject to the provisions of this Act,

when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1.) Where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as herein-before provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(a.) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(b.) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

50.—(1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

(a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged :

(b.) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice :

(c.) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment :

(d.) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

51.—(1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be ; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the

bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(a.) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day :

(b.) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a.) The person at whose request the bill is protested :

(b.) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52.—(1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

53.—(1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance:

(2.) Is precluded from denying to a holder in due course:

(a.) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(b.) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(c.) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

55.—(1.) The drawer of a bill by drawing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(a.) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b.) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(c.) Is precluded from denying to his immediate or a subsequent indorsee that the

bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a.) The amount of the bill:

(b.) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

(c.) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58.—(1.) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

59.—(1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions herein-after contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a.) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b.) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

62. (1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

63. (1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would

have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

64. (1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenour.

(2.) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

65. (1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour *supra* protest in order to be valid must—

(a.) be written on the bill, and indicate that it is an acceptance for honour:

(b.) be signed by the acceptor for honour:

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66. (1.) The acceptor for honour of a bill

by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67. (1.) Where a dishonoured bill has been accepted for honour *suprà* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

68. (1.) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour *suprà* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the

holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment *suprà* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set.

71. (1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows :

- (1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made.

Provided that—

- (a.) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue :

- (b.) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

- (2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

- (3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

- (4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

- (5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

74. Subject to the provisions of this Act—

- (1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

- (2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

- (3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (1.) Countersand of payment :
- (2.) Notice of the customer's death.

Crossed Cheques.

76. (1.) Where a cheque bears across its face an addition of—

- (a.) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable" ; or
- (b.) Two parallel transverse lines simply, either with or without the words "not negotiable" ;

that addition constitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

77. (1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

79. (1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be

placed in the same position as if payment of the cheque had been made to the true owner thereof.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

PART IV.

PROMISSORY NOTES.

83. (1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

85. (1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

86. (1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the

instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

87. (1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

88. The maker of a promissory note by making it—

- (1.) Engages that he will pay it according to its tenour;
- (2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

89. (1.) Subject to the provisions in this part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

- (a.) Presentment for acceptance;
- (b.) Acceptance;
- (c.) Acceptance *suprà* protest;
- (d.) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

SUPPLEMENTARY.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where

it is in fact done honestly, whether it is done negligently or not.

91. (1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

- (a.) Sunday, Good Friday, Christmas Day;
 - (b.) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it;
 - (c.) A day appointed by Royal proclamation as a public fast or thanksgiving day.
- Any other day is a business day.

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

96. The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

97. (1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

(a.) The provisions of the Stamp Act, 1870, or Acts amending it, or any law or enactment for the time being in force relating to the revenue:

(b.) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies:

(c.) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

(d.) The validity of any usage relating to dividend warrants, or the indorsements thereof.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parole evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the accennial prescription.

SCHEDULES.

FIRST SCHEDULE.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A.B.* [householder], of _____ in the county of _____, in the United Kingdom, at the request of *C.D.*, there being no notary public available, did on the _____ day of _____ 188____ at _____ demand payment [or acceptance] of the bill of exchange hereunder written, from *E.F.*, to which demand he made answer [state answer,

if any] wherefore I now in the presence of *G.H.* and *J.K.* do protest the said bill of exchange.

(Signed) *A.B.*

G.H. } Witnesses.
J.K. }

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title of Act and extent of Repeal.
9 Will. 3. c. 17.	- An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8.	- An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3. c. 30.	- An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3. c. 42.	- An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3. c. 88.	- An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum in England.
1 & 2 Geo. 4. c. 78.	- An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4. c. 15.	- An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4. c. 24.	- An Act to repeal certain Acts, and to consolidate and amend the laws relating to Bills of Exchange and Promissory Notes in Ireland. in part; that is to say,—
2 & 3 Will. 4. c. 98.	- sections two, four, seven, eight, nine, ten, eleven.
6 & 7 Will. 4. c. 58.	- An Act for regulating the protesting for nonpayment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
8 & 9 Vict. c. 37.	- An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors <i>suprà</i> protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
in part.	- An Act to regulate the issue of Bank Notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say,—
19 & 20 Vict. c. 97.	- section twenty-four.
in part.	- The Mercantile Law Amendment Act, 1856, in part; that is to say,—
23 & 24 Vict. c. 111.	- sections six and seven.
in part.	- An Act for granting to Her Majesty certain Duties of Stamps, and to amend the laws relating to the Stamp Duties, in part; that is to say,—
34 & 35 Vict. c. 74.	- section nineteen.
39 & 40 Vict. c. 81.	- An Act to abolish days of grace in the case of Bills of Exchange and Promissory Notes payable at sight or on presentation.
41 & 42 Vict. c. 13.	- The Crossed Cheques Act, 1876.
	- The Bills of Exchange Act, 1878.
ENACTMENT REPEALED AS TO SCOTLAND.	
19 & 20 Vict. c. 60.	- The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say,—
in part.	- sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

CHAP. 62.

Public Works Loans Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Citation of Acts.*

PART I.

Grant of Money for Public Works Loan Commissioners.

3. *Grant of 3,000,000l. for Public Works loans during the period ending 30th June 1883.*

PART II.

Grant of Money for Public Works Commissioners, Ireland.

4. *Grant of 1,200,000l. for loan by Commissioners of Public Works in Ireland during the period ending 30th June 1883.*

PART III.

Grant of Money for Irish Land Commission.

5. *Grant of 400,000l. to Land Commission.*
6. *Power to borrow for purposes of 45 & 46 Vict. c. 47.*

PART IV.

Amendment of Acts.

7. *Amendment of 24 & 25 Vict. c. 45. as to provision for loans in provisional order respecting harbours.*
8. *Account in case of loan on security of rate.*
9. *Repeal of 38 & 39 Vict. c. 89. s. 13. and 40 & 41 Vict. c. 27. s. 11. as to annual and quarterly statements of amounts required by borrowers.*
10. *Amendment as to repayment of advances of s. 28 of 44 & 45 Vict. c. 49.*

Provision as to certain Loans.

11. *Power to postpone debt due from trustees of Pulteney Harbour at Wick.*

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners. (18th August 1882.)

WHEREAS it is expedient to grant money for the purpose of loans by the Public Works Loan Commissioners and the Commissioners

of Public Works in Ireland and the Irish Land Commission:

And whereas it is expedient to amend the Acts relating to the said Commissioners, and to make provisions respecting certain sums due in respect of loans granted by the said Commissioners:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Public Works Loans Act, 1882.

2. This Act may be cited, together with the Public Works Loans Act, 1875, and the Public Works Loans Act, 1879, as the Public Works Loans Acts, 1879 to 1882.

PART I.

Grant of Money for Public Works Loan Commissioners.

3. For the purpose of loans by the Public Works Loan Commissioners,—

- (1.) Any sum or sums, not exceeding in the whole the sum of three million pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the Public Works Loans Act, 1875, as amended by the Public Works Loans Act, 1879; and
- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day at which a further Act granting money for the purpose of the said loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the Public Works Loans Act, 1875, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART II.

Grant of Money for Public Works Commissioners, Ireland.

4. For the purpose of loans by the Commissioners of Public Works in Ireland,—

- (1.) Any sum or sums, not exceeding in the whole one million two hundred thousand pounds, may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by Part Two of the Public Works Loans (Ireland) Act, 1877, as amended by the Public Works Loans Act, 1879; and
- (2.) The Commissioners for the Reduction of the National Debt may advance any part or parts of the total sum above in this section mentioned in reduction of the amount which may be so issued out of the Consolidated Fund;

and such sums may be issued and advanced during the period ending on the day on which a further Act authorising the issue of money for those loans comes into operation.

The Treasury may, in the manner and subject to the limitations provided by Part Two of the Public Works Loans (Ireland) Act, 1877, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

PART III.

Grant of Money for Irish Land Commission.

5. For the purpose of advances or of purchases of estates by the Land Commission in Ireland under the Land Law (Ireland) Act, 1881, any sum or sums not exceeding in the whole the sum of four hundred thousand pounds may be issued out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in manner provided by the said Act, and such sums may be issued during the period ending on the day on which a further Act providing money for the purpose of such advances or purchases comes into operation.

The Treasury may, in the manner and subject to the limitations provided by the said Act, borrow the sum authorised by this section to be issued out of the Consolidated Fund, or any part of that sum.

6. Whereas by a Bill pending in Parliament for an Act to be called the Arrears of Rent (Ireland) Act, 1882, it is provided that the liabilities incurred by the Irish Land Commission as therein mentioned should be primarily charged on the Irish Church Temporalities Fund, and, subject thereto, on the Consolidated Fund in such manner as might thereafter be provided by Parliament.

And whereas it is expedient to make provision for the discharge of such liabilities in the event of the said Bill being passed: Be it therefore enacted as follows:

(1.) In the event of the said Arrears of Rent (Ireland) Act, 1882, being passed, the Irish Land Commission, for the purpose of meeting orders for payment made under the said Act, and of making advances, and of paying money for grants under the said Act, and generally of discharging the liabilities incurred by them under that Act, may, with the consent of the Treasury, from time to time borrow, on the security of the Irish Church Temporalities Fund, such sums not exceeding in the whole two million six hundred thousand pounds, and at such rate and on such terms as may be sanctioned by the Treasury.

(2.) The Commissioners for the Reduction of the National Debt may, if they think fit, with the approval of the Treasury, out of any money in their hands on account of savings banks, lend to the Irish Land Commission, with such guarantee as is by this section authorised, but not otherwise, the whole or any part of the money which by this section the Irish Land Commission are authorised to borrow.

(3.) For the purpose of giving effect to the charge by the said Act on the Consolidated Fund, the Treasury may from time to time guarantee, in such form as they think expedient, the payment of the principal and interest of all or any part of the money for the time being borrowed by the Irish Land Commission in pursuance of this section.

(4.) Any security given by the Irish Land Commission in pursuance of this section shall be in such form and contain such provisions as the Treasury may approve.

(5.) The Treasury may from time to time, if required, for the purpose of giving effect to any such guarantee as aforesaid, issue out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, such sums as may be necessary for the payment of the principal and interest guaranteed by them, or of any part thereof; but any money so issued shall be repaid to the Consolidated Fund out of any surplus of the funds in the hands of the Irish Land Commission on account of the Irish Church Temporalities Fund.

(6.) For the purposes of this section, the Irish Church Temporalities Fund means the fund under the control of the Irish Land Commission under the provisions of the Irish Church Act Amendment Act, 1881.

PART IV.

Amendment of Acts.

7. Whereas under the General Pier and Harbour Act, 1861, the Board of Trade can make a provisional order, subject to confirmation by Parliament, authorising the construction of a harbour, pier, or other works within the meaning of the said Act, and authorising the promoters to raise a loan to the amount specified in the order for the purpose of such harbour, pier, or works, and in many cases where the promoters are a public body difficulties arise in raising such loan on account of the defective security, while the construction of the said harbour, pier, or works is of so great importance to the inhabitants of the town or place where the same are to be constructed that they would be willing to guarantee the loan, if power were given for this purpose, and it is expedient to

provide for the conferring of such power by the provisional order: Be it therefore enacted as follows:

(1.) Where a provisional order under the General Pier and Harbour Act, 1861, authorises any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorise any rating authority as herein-after defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.

(2.) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed.

(3.) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principal and interest of any money borrowed by the said authority, and for the reimbursement of the fund or rate out of the income of the said works, or otherwise by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.

(4.) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board, or as regards Scotland to the Secretary of State for the Home Department, a statement of such proposal, and if the Local Government Board, or

Secretary of State for the Home Department, declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section.

In this section,—

The expression "public body" means any rating authority, also any commissioners, or trustees, or other body or person who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works:

The expression "rating authority" means—

- (1.) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and
- (2.) As regards Scotland, the town council or commissioners of police of, or other local authority having power to levy assessments in, any royal or parliamentary burgh, or in any populous place the boundaries whereof have been fixed and ascertained under the General Police and Improvement (Scotland) Act, 1862, or under the Act therein recited or under any local Act; and
- (3.) As regards Ireland, any urban sanitary authority under the Public Health (Ireland) Act, 1878, and the Acts amending the same.

8. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a

purpose for which the said advances were made.

9. Section thirteen of the Public Works Loans Act, 1875, and section eleven of the Public Works Loans (Ireland) Act, 1877, (which provided for annual and quarterly statements from borrowers of the amounts which they will probably apply to borrow) are hereby repealed.

10. Whereas by section twenty-eight of the Land Law (Ireland) Act, 1881, it is provided that any advance made by the Irish Land Commission for the purpose therein mentioned shall be repaid by an annuity in favour of the Land Commission for thirty-five years of five pounds for every one hundred pounds of such advance, and so in proportion for any less sum, and further that every such advance shall be secured to the Commission either in such manner as may be agreed upon or in manner provided by Part Three of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872.

And whereas in pursuance of the last-mentioned Acts the annuity is repayable by equal half-yearly payments on the first day of May and the first day of November in every year, and the necessary apportionment is made in respect of the first and last of such payments.

And whereas it is expedient to make such different provision respecting the said annuity as herein-after mentioned: Be it therefore enacted as follows:

Where any advance repayable by an annuity under section twenty-eight of the Land Law (Ireland) Act, 1881, has either before or after the passing of this Act been secured in manner provided by Part Three of the Landlord and Tenant (Ireland) Act, 1870, as amended by the Landlord and Tenant (Ireland) Act, 1872, the first half-yearly payment of the annuity shall, where the advance is not made on one of the gale days (namely, the first day of May or the first day of November), be due and paid on the second of such gale days after the date of the advance, and together with such first half-yearly payment there shall be due and paid an additional sum for interest on the advance at the rate of three and a half per cent. per annum from the date of the advance, until the first gale day next after that date.

Provision as to certain Loans.

11. Whereas the Public Works Loan Commissioners, under the Harbours and Passing Tolls Act, 1861, advanced in the year one thousand eight hundred and sixty-eight, and subsequent years, to the British Fisheries

Society for Pulteney Town Harbour in Wick Bay sums amounting in the whole to sixty-two thousand pounds, which sums were expended on a breakwater and works for the harbour, and, with interest at the rate of three and a quarter per cent. per annum, are repayable out of the revenues of the harbour by annuities amounting in the whole to two thousand six hundred and forty-two pounds five shillings, and terminating between the years one thousand nine hundred and eighteen and one thousand nine hundred and twenty-three; and by the payment of such annuities the capital sum due has been reduced to fifty-seven thousand eight hundred and twenty-one pounds thirteen shillings and twopence.

And whereas the harbour and the revenues thereof were, in pursuance of an Act of Parliament, transferred by the British Fisheries Society to the Pulteney Harbour trustees, and the said Act charged the above annuities on the revenue of the harbour next after an annual sum of sixteen hundred pounds for the maintenance and management of the harbour.

And whereas the breakwater and works upon which the said sums were expended have been almost wholly destroyed by the violence of the sea, and in consequence of the injury thereby caused to the harbour and other causes, the revenue of the harbour, upon which the said annuities are charged has been diminishing.

And whereas with a view to the restoration of the said works or other improvement of the

harbour, it is expedient to raise further loans and to empower the Treasury, on being satisfied of the circumstances herein-after mentioned, to authorise such postponement of the said annuities due to the Public Works Loan Commissioners, as is herein-after mentioned: Be it therefore enacted as follows:

If the Pulteney Harbour trustees satisfy the Treasury that works for the restoration of the destroyed breakwater and works or otherwise for the improvement of Pulteney Harbour would be of public utility, and that such works can be executed for a reasonable sum, the Treasury may authorise the Public Works Loan Commissioners to agree that notwithstanding anything in the Public Works Loan Act, 1875, any loan or loans to be borrowed for the said works should, to such amount (not exceeding the said sum) and on such conditions as may seem expedient, have priority over the advances made by the Public Works Loan Commissioners before the passing of this Act, and the interest thereon, and may further authorise them to agree with the Pulteney Harbour trustees that the payments on account of the said advances, and the interest thereon, should be wholly or partly suspended during such number of years as may be agreed upon.

The Public Works Loan Commissioners may advance the said new loan or loans if they are satisfied with the sufficiency of the security for the same, irrespective of the said advances and interest hereby authorised to be postponed.

CHAP. 63.

Constabulary (Ireland) Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Revised scale of pay for certain officers.*
3. *Pensions and allowances.*
4. *Retirement of officers.*
5. *An additional county inspector may be appointed.*
6. *Provision for the performance of the duties of deputy inspector general in certain cases.*
7. *Interpretation.*

SCHEDULE.

An Act to amend the Acts regulating to the pay of certain officers of the Royal Irish Constabulary Force, and for other purposes connected therewith.

(18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Constabulary (Ireland) Amendment Act, 1882.

2. It shall be lawful for the Lord Lieutenant at any time within three months after the passing of this Act, with the sanction of the Commissioners of the Treasury, to fix the annual salaries to be paid to the several county inspectors and sub-inspectors of constabulary, at rates not exceeding those specified in the schedule to this Act.

The rates of salaries so fixed shall be in lieu of those at present in force, and shall take effect from and after the thirtieth day of June one thousand eight hundred and eighty-two. The salaries so appointed shall be in addition to any good service pay at present authorised to be paid.

3. From and after the passing of this Act, the third section of the Constabulary (Ireland) Act, 1874, shall, so far as it determines the proportion which county inspectors and sub-inspectors may receive of their salaries on being superannuated, be amended as follows :

(a.) The gratuity referred to in sub-section one of the said section may be granted to any county inspector or sub-inspector whose service has exceeded five years and has been less than ten years.

(b.) The annual pension which may be granted to any county inspector or sub-inspector shall be as follows :

To any such officer who shall have served for ten years and upwards, and under eleven years, an annual pension not exceeding ten sixtieths of his annual salary :

And an addition to the annual pension, not exceeding one sixtieth of such annual salary in respect of each additional year of such service, until the completion of a period of service of forty years, when an annual pension not exceeding forty sixtieths may be granted, and no addition shall be made in respect of any service beyond forty years.

For the purpose of calculating the amount of any pension which may be granted under this Act, the term salary shall include all allowances for lodging, house-rent, and servant: Provided that the allowance in respect of lodging or house-rent shall not exceed one-sixth of the actual salary and other emoluments.

This section shall apply to all county inspectors and sub-inspectors appointed at any time before or after the passing of this Act, subject to the following exception in the case of such of them as were appointed before the passing of this Act :

Every county inspector and sub-inspector appointed before the passing of this Act, who shall have served for so many years as to be qualified in respect of his length of service under the statutes in force at the time of the passing of this Act to retire upon a pension, shall continue to be so qualified in respect of the same length of service, after the passing of this Act :

In the case of every county inspector and sub-inspector appointed before the passing of this Act to whom the pension granted under this Act is of less amount than might have been granted to him if this Act had not been passed, such annual addition shall be made to the pension granted to him under this Act as shall make it equal to the pension which might have been granted to him if this Act had not been passed.

Provided that no county inspector or sub-inspector appointed before the passing of this Act shall be entitled to receive any pension exceeding the amount which may be granted to him under the scale provided by this Act, or the amount which it would have been lawful to grant to him if this Act had not been passed; but every such county inspector or sub-inspector shall, on retirement, and if otherwise qualified for a pension, be entitled to elect between such amounts respectively.

4. On the first day of October one thousand eight hundred and eighty-two, every assistant inspector-general and county inspector and sub-inspector shall cease to be a member of the constabulary force if he has then attained the age herein-after defined as the specified age for retirement, and shall be qualified to receive the maximum pension of the rank and class in which he is then serving, notwithstanding that he may not then have served for the full number of years which qualify him to receive the same.

After the said first day of October every assistant inspector-general, county inspector,

and sub-inspector, shall cease to be a member of the force when he fulfils the two following conditions; that is to say, when he attains the specified age for retirement, and when also he has by the length of his service become qualified to receive the maximum pension of the rank and class in which he is then serving; Provided that the second of the said two conditions shall be deemed to be fulfilled in the case of any assistant inspector-general, county inspector, and sub-inspector to whom respectively the Commissioners of the Treasury on the recommendation of the Lord Lieutenant agree, within six months of the passing of this Act, to grant such maximum pension, notwithstanding that he may not then have served the full number of years which qualify him to receive the same.

The specified age for retirement shall be for an assistant inspector-general and county inspector the age of sixty-five years, and for a sub-inspector the age of sixty years.

In this section the term county inspector shall include the inspector of constabulary for the town of Belfast.

5. The Lord Lieutenant may, if he thinks fit, add one county inspector to the number of county inspectors who may be appointed under the Acts in force at the time of the passing of this Act.

6. Any Acts which might lawfully be done by the deputy inspector general of the Royal Irish Constabulary, acting instead of the inspector general, in accordance with the statutes in that behalf, may from time to time be lawfully done by any other officer of the force, not being under the rank of assistant inspector general, authorised by writing under the hand of the Lord Lieutenant.

7. In this Act the term "Lord Lieutenant" includes any chief governor or governors of Ireland for the time being.

SCHEDULE.

RATES OF PAY.

For county inspectors	- - - - -	350 <i>l.</i> per annum on appointment to that rank, increasing by 20 <i>l.</i> per annum to 450 <i>l.</i>
For sub-inspectors:		
For sub-inspectors of the 3rd class	-	125 <i>l.</i> per annum.
For sub-inspectors of the 2nd class	-	165 <i>l.</i> per annum during the first five years of service in that class; 180 <i>l.</i> per annum during the remaining service in that class.
For sub-inspectors of the 1st class	-	225 <i>l.</i> per annum during the first three years of service in that class; 250 <i>l.</i> per annum during the subsequent three years of service in that class; 275 <i>l.</i> per annum during the subsequent six years of service in that class; and 300 <i>l.</i> per annum during the remaining years of service in that class.

CHAP. 64.

Expiring Laws Continuance Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Continuance of Acts in schedule.*

SCHEDULE.

An Act to continue various expiring
Laws.
(18th August 1882.)

and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

WHEREAS the several Acts mentioned in column one of the schedule to this Act are, to the extent specified in column two of that schedule, limited to expire on the thirty-first day of December one thousand eight hundred and eighty-two:

And whereas it is expedient to provide for the continuance as in this Act mentioned of such Acts, and of the enactments amending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

1. This Act may be cited as the Expiring Laws Continuance Act, 1882.

2. The Acts mentioned in column one of the schedule to this Act, in so far as they are temporary in their duration, shall, to the extent in column two of the said schedule mentioned, be continued until the thirty-first day of December one thousand eight hundred and eighty-three, and any enactments amending or affecting the enactments continued by this Act shall, in so far as they are temporary in their duration, be continued in like manner.

SCHEDULE.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(1) 5 & 6 Will. 4. c. 27. Linen, Hempen, Cotton, and other Manufactures (Ireland).	The whole Act so far as is not repealed.	3 & 4 Vict. c. 91. (except ss. 18 and 23). 5 & 6 Vict. c. 68. 7 & 8 Vict. c. 47. 30 & 31 Vict. c. 60.
(2) 3 & 4 Vict. c. 89. Poor Rates, Stock in Trade Exemption.	The whole Act.	—
(3) 4 & 5 Vict. c. 35. Copyhold, Inclosure, and Tithe Commissioners.	So much as relates to the appointment of and the period for holding office by Commissioners and other officers.	14 & 15 Vict. c. 53. 25 & 26 Vict. c. 73.
(4) 4 & 5 Vict. c. 59. Application of Highway Rates to Turnpike Roads.	The whole Act.	—
(5) 10 & 11 Vict. c. 32. Landed Property Improvement (Ireland).	As to powers of Commissioners.	12 & 13 Vict. c. 59. 13 & 14 Vict. c. 31. 25 & 26 Vict. c. 29. 29 & 30 Vict. c. 40.
(6) 10 & 11 Vict. c. 98. Ecclesiastical Jurisdiction.	As to provisions continued by 21 & 22 Vict. c. 50.	—
(7) 11 & 12 Vict. c. 32. County Cess (Ireland).	The whole Act - - -	20 & 21 Vict. c. 7.

1. Original Acts.	2. How far continued.	3. Amending Acts.
(8) 14 & 15 Vict. c. 104. Episcopal and Capitular Estates Management.	The whole Act so far as it is not repealed.	17 & 18 Vict. c. 116. 21 & 22 Vict. c. 94. 22 & 23 Vict. c. 46. 23 & 24 Vict. c. 124. 31 & 32 Vict. c. 114. s. 10.
(9) 17 & 18 Vict. c. 102. Corrupt Practices Prevention.	The whole Act so far as it is not repealed.	21 & 22 Vict. c. 87. 26 & 27 Vict. c. 29. 31 & 32 Vict. c. 125.
(10) 23 & 24 Vict. c. 19. Dwellings for Labouring Classes (Ireland).	The whole Act.	—
(11) 24 & 25 Vict. c. 109. Salmon Fishery (England) Act.	As to appointment of inspectors, s. 31.	—
(12) 26 & 27 Vict. c. 105. Promissory Notes.	The whole Act.	—
(13) 27 & 28 Vict. c. 20. Promissory Notes and Bills of Exchange (Ireland).	The whole Act.	—
(14) 28 & 29 Vict. c. 46. Militia Bal- lots Suspension.	The whole Act.	—
(15) 28 & 29 Vict. c. 83. Locomotives on Roads.	The whole Act so far as it is not repealed.	41 & 42 Vict. c. 58. 41 & 42 Vict. c. 77. (Part II.)
(16) 29 & 30 Vict. c. 52. Prosecution Expenses.	The whole Act.	—
(17) 31 & 32 Vict. c. 125. Election Petitions and Corrupt Practices.	The whole Act - - -	42 & 43 Vict. c. 75.
(18) 32 & 33 Vict. c. 21. Election Commissioners Expenses.	The whole Act - - -	34 & 35 Vict. c. 61.
(19) 32 & 33 Vict. c. 56. Endowed Schools (Schemes).	As to the powers of making schemes, and as to the payment of the salaries of additional Charity Commissioners and additional secretary.	36 & 37 Vict. c. 87. 37 & 38 Vict. c. 87.
(20) 34 & 35 Vict. c. 87. Sunday Observance Prosecutions.	The whole Act.	—

1. Original Acts.	2. How far continued.	3. Amending Acts.
(21) 35 & 36 Vict. c. 33. Parliamentary and Municipal Elections (Bal- lot).	The whole Act - - -	38 & 39 Vict. c. 40. (Municipal Elections.)
(22) 36 & 37 Vict. c. 43. Regulation of Railways.	The whole Act - - -	37 & 38 Vict. c. 40. (Part II.)
(23) 38 & 39 Vict. c. 48. Police Ex- penses.	The whole Act.	—
(24) 38 & 39 Vict. c. 84. Returning Officers Expenses.	The whole Act.	—
(25) 39 & 40 Vict. c. 21. Juries (Ireland).	The whole Act.	—
(26) 41 & 42 Vict. c. 41. Returning Officers Expenses (Scotland).	The whole Act.	—
(27) 41 & 42 Vict. c. 72. Sale of Liquors on Sunday (Ireland).	The whole Act.	—
(28) 43 Vict. c. 18. Parliamentary Elections.	The whole Act except so far as it continues any other Act.	—

CHAP. 65.

Prison Charities Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Power of Charity Commissioners, on application of Secretary of State, to make scheme respecting prison charities.*

An Act to make provision respecting
certain Prison Charities.

(18th August 1882.)

Be it enacted by the Queen's most Excellent
Majesty, by and with the advice and con-
sent of the Lords Spiritual and Temporal,
and Commons, in this present Parliament

assembled, and by the authority of the same,
as follows:

1. This Act may be cited as the Prison
Charities Act, 1882.

2. Where the Charity Commissioners for
England and Wales (in this Act referred to as
the Charity Commissioners) would have power

to make an order for the establishment of a scheme for the administration of a prison charity as herein-after defined, if application for such scheme were made by the trustees or persons acting in the administration of the charity, such Commissioners shall also have power to make a like order upon the application of one of Her Majesty's Principal Secretaries of State in like manner as if he were the said trustees, and the Charitable Trusts Acts, 1853 to 1869, shall apply accordingly.

Provided that nothing in this Act shall authorise the making of a scheme upon the application of the Secretary of State in a case where the prison charity is applied for other purposes in pursuance of any special Act of Parliament.

For the purposes of this Act the expression "prison charity" means a charity the endowment of which is applicable for the benefit of any prisoners, or for any purpose connected with any prisoners or prison, whether the prisoners be confined in or the prison be a common gaol, house of correction, or other place of confinement, and where the endowment of a charity is partly applicable for the purposes aforesaid and partly for other purposes, so much of the endowment as appears to the Charity Commissioners to be applicable for the aforesaid purposes shall be deemed to be a prison charity within the meaning of this Act.

CHAP. 66.

Passenger Vessels Licences Amendment (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Condition may be endorsed on licence.*
2. *Penalties.*
3. *Licences may be called in for indorsation.*
4. *Short title.*

An Act to amend the Law relating to
Licences to retail Intoxicating Liquors
on Passenger Vessels in Scotland.
(18th August 1882.)

WHEREAS an Act was passed in the ninth year of the reign of His Majesty King George the Fourth, for regulating the retail of excisable articles and commodities to passengers on board passage vessels, from one part to another of the United Kingdom:

And whereas another Act was passed in the Session of Parliament held in the fourth and fifth years of the reign of His late Majesty King William the Fourth, to repeal the duties made on spirits in Ireland, and to impose other duties in lieu thereof, and to impose additional duties on licences to retailers of spirits in the United Kingdom:

And whereas by the Inland Revenue Act, 1880, duties were imposed upon licences for the sale of intoxicating liquors on board vessels employed for the carriage of passengers going from and returning to the same place in the United Kingdom on the same day, and it was enacted that such licences should be granted

under and be subject to the enactments contained in the above-recited Acts, so far as such enactments are consistent with the said Inland Revenue Act, and the terms of the licences respectively:

And whereas great evils have arisen from the sale of intoxicating liquors on Sunday on board of passenger vessels plying on rivers and estuaries in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. It shall be lawful for the Commissioners of Inland Revenue, or for any officer duly authorised by them to grant licences for the retail of intoxicating liquors on board packets, boats, and other vessels employed for the carriage of passengers from one part of Scotland to another, or going from and returning to the same place in Scotland on the same day, in terms of the recited Acts, to indorse on such licences a condition that no intoxicating liquor shall be sold, retailed, bartered, or supplied on

board such vessels during any voyage commenced and terminated on the same Sunday.

2. If any person holding a licence having such a condition as aforesaid indorsed thereon, shall sell, retail, barter, or supply, or shall permit to be sold, bartered, or supplied, any intoxicating liquor on a Sunday on board any such vessel in contravention of the said condition, such contravention shall be deemed and taken to be a retailing or selling intoxicating liquors without having taken out a licence, and such person shall be guilty of an offence within the meaning of the third section of the first-recited Act, and shall be liable to the penalties therein provided.

3. It shall be lawful for the Commissioners of Inland Revenue at any time after the passing of this Act to require the holder of any licence granted under the authority of the recited Acts, or any of them, whether such licence

was granted prior or subsequent to the passing of this Act, to send in his licence to the Commissioners or to any officer authorised by them to issue such licences, for the purpose of having such condition as aforesaid indorsed upon it, and if any holder of such licence shall fail to send his licence to the Commissioners or to such officer as aforesaid within seven days after receipt of a notice from the Commissioners or any officer duly authorised by them, and shall thereafter sell, retail, barter, or supply, or permit to be sold, bartered, or supplied, intoxicating liquors on board any vessel to which such licence applies, he shall be guilty of an offence within the meaning of the third section of the first-recited Act, and shall be liable to the penalties therein provided.

4. This Act may be cited as the Passenger Vessels Licences Amendment (Scotland) Act, 1882.

CHAP. 67.

South Wales Turnpike Roads Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of Act.*
3. *Money and materials to be placed at the disposal of district boards.*
4. *Annual returns under Local Taxation Returns Acts.*
5. *Repeal of enactments.*

SCHEDULE.

An Act to further amend the Law relating to Turnpike Roads in South Wales.

(18th August 1882.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the South Wales Turnpike Roads Amendment Act, 1882; and the Act passed in the session of the seventh and eighth years of Her Majesty's reign, "To consolidate and amend the laws relating to turnpike trusts in South Wales," may be cited as the South Wales Turnpike Trusts Act, 1844.

2. This Act applies to the six counties of Glamorgan, Brecknock, Radnor, Carmarthen,

Pembroke, and Cardigan, herein-after referred to as the six counties.

3. The county roads board of each of the six counties may, by their order, assign and place to the credit or at the disposal of the several district roads boards in each county respectively such sums of money out of the county roads fund, and such quantity of materials or other necessary things purchased out of the county roads fund, as the county roads board may deem to be necessary and sufficient for the ordinary maintenance and repairs of the several turnpike roads within such districts respectively; and the county roads board may also by their order place under the control and superintendence of the said district roads boards respectively, subject to the restrictions and limitations contained in the South Wales Turnpike Trusts Act, 1844, any works or improvements to be done or executed in or upon any of the roads within such districts

respectively, and for the purpose of enabling them to carry on and execute such works and improvements may place to the credit or at the disposal of the said district roads boards such moneys, materials, and other things as aforesaid as the said county roads board may deem to be necessary and sufficient for the performance thereof.

4. The clerk to the county roads board for each of the six counties shall make an annual return to the Local Government Board of the receipts and expenditure of such county roads board; and the Local Taxation Returns Acts, 1860 and 1877, shall apply to returns of rates, tolls, receipts, and expenditure as regards roads under the management of such county

roads boards, in like manner as if they were specifically mentioned in the said Acts, and the said county roads boards were mentioned as local authorities in the said Acts.

5. The power of one of Her Majesty's Principal Secretaries of State now vested in the Local Government Board to appoint a general superintendent of county roads for South Wales shall not be exerciseable after the passing of this Act; and the sections and parts of sections of the South Wales Turnpike Trusts Act, 1844, which are specified in the schedule to this Act are hereby repealed, without prejudice to anything done or suffered before or pending at the date of the passing of this Act.

SCHEDULE.

SECTIONS AND PARTS OF SECTIONS OF 7 & 8 VICT. c. 91 REPEALED.

Section 67, from and inclusive of the words "and the times" to the end of the section.

Section 68, the words "and shall also receive" and examine the several estimates, reports, "and accounts which shall be made and submitted to the said county roads boards by the general superintendent of county roads herein-after mentioned"; and the words "or by the general superintendent of county roads herein-after mentioned."

Section 69.

Section 70.

Section 80.

Section 87, the words "to the said general superintendent of county roads to be by him submitted."

Section 88.

Section 95, the words "which shall be made out and submitted to such board by the said general superintendent as aforesaid."

CHAP. 68.

Corrupt Practices (Suspension of Elections) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Suspension of elections in certain cities and boroughs.*

SCHEDULE.

An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs.

(18th August 1882.)

WHEREAS, in pursuance of addresses to Her Majesty from both Houses of Parliament in relation to election of members to serve in Parliament for the cities and boroughs men-

tioned in the schedule to this Act, commissioners were appointed by commissions, dated the ninth day of September one thousand eight hundred and eighty, for the purpose of making inquiry into the existence of corrupt practices at the elections of members to serve in Parliament for the said cities and boroughs:

And whereas the said commissioners have respectively reported as regards the existence of corrupt practices to the effect in the second column of the said schedule mentioned:

And whereas it is expedient, with a view to

the future consideration of the cases by Parliament, to provide temporarily for the suspension of elections in the said cities and boroughs :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Corrupt Practices (Suspension of Elections) Act, 1882.

2. An election of a member or members to serve in Parliament for any of the cities or boroughs mentioned in the schedule to this Act shall not be held until the expiration of seven days after the meeting of Parliament in the year one thousand eight hundred and eighty-three.

SCHEDULE.

CITIES AND BOROUGHS REFERRED TO.

Name of City or Borough.	Report of Commissioners as to prevalence of corrupt practices.
Boston	Corrupt practices prevailed very extensively at the election of 1880. It was stated as an undoubted fact that all elections, both parliamentary and municipal, have for a long time past been corrupt.
Canterbury	Corrupt practices extensively prevailed at the elections of 1879 and 1880.
Chester	Corrupt practices extensively prevailed at the general elections of February 1874 and of April 1880.
Gloucester	Corrupt practices extensively prevailed at the elections in February 1874 and March 1880.
Macclesfield	Corrupt practices extensively prevailed at the elections of 1865, 1868, 1874, and 1880.
Oxford	Corrupt practices were committed at the election in February 1874, and corrupt practices extensively prevailed at the elections in March 1874, April 1880, and May 1880, by way of payment of money to voters as therein mentioned.
Sandwich	In the election of May 1880, there was practised throughout the constituency, not only indirect bribery of various kinds, but direct bribery, the most extensive and systematic. Electoral corruption has long extensively prevailed in the borough.

CHAP. 69.

Intermediate Education (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Application of surplus income for 1879 and 1880 towards deficiency for 1881.*
3. *Application of future surplus.*
4. *Prohibition on anticipation of income.*

An Act to amend the Intermediate Education (Ireland) Act, 1878.
(18th August 1882.)

WHEREAS by the eighth section of the Intermediate Education (Ireland) Act, 1878, it is amongst other things enacted that the annual income arising from the amount by said Act directed to be provided for the use of the Board shall, so far as the same shall not in each or any year require to be so applied, be invested by the Board by way of accumulation in the purchase of Government securities :

And whereas there was a surplus of the annual income for the years one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty over and above the amount which in said years respectively was required to be applied for the purposes of said Act, but the annual income for the year one thousand eight hundred and eighty-one was insufficient for the purposes of said Act :

And whereas it is expedient to empower the Board of Intermediate Education for Ireland to apply the surplus income for the said years one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty towards making good the deficiency for the year one thousand eight hundred and eighty-one, and otherwise to amend the said Act :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Intermediate Education (Ireland) Act, 1882.

2. It shall be lawful for the Board to apply the surplus income, which in the years one thousand eight hundred and seventy-nine and one thousand eight hundred and eighty arose from the securities vested in the Board, and which now remains after satisfying the purposes of the Act for the said years respectively, to the purposes of the said Act for the year one thousand eight hundred and eighty-one.

3. In the event of the income of the Board being in the present or any future year more than sufficient to answer the purposes of said Act for such year, it shall be lawful for the Board to apply in whole or in part the surplus income of such year, not required to be applied to the purposes of said Act during said year, for or towards the purposes of the said Act in or for any other year or years.

4. It shall not be lawful for the Board to anticipate in one year the income of any future year, but this enactment shall not prevent the hiring of any office, the assignment of salary to any officer, the grant of exhibitions, or any other like act in one year which involves a periodical payment not only in the said year, but in future years.

CHAP. 70.

Supreme Court of Judicature (Ireland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Interpretation of "office."*
3. *Amendment of s. 73. of 40 & 41 Vict. c. 57.*

An Act to amend the Supreme Court of Judicature Act (Ireland), 1877.
(18th August 1882.)

WHEREAS by section seventy-three of the Supreme Court of Judicature Act (Ireland), 1877 (herein-after called the principal Act), it is enacted that subject to the provisions in that Act contained as to existing officers of the courts whose jurisdiction had been thereby transferred to the Supreme Court, the Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or

any two of them, of whom the Lord Chancellor should be one, with the concurrence of the Treasury, should within two years from the commencement of the Act determine what officers, clerks, or other persons holding subordinate positions requisite for the permanent organisation of the official staff of the Supreme Court, and every court and division thereof should be retained or employed; and might with the like concurrence abolish any unnecessary office, or reduce or in case of additional duties increase the salary of an office, or alter the duties or designation thereof, notwith-

standing that the patronage thereof might be vested in an existing judge:

And whereas doubts have arisen as to whether the said powers or any of them can be exercised after the expiration of the said period of two years from the commencement of the said Act, and also whether such powers, though not subject to such limitation in point of time, can be exercised so as to abolish, or reduce or increase the salary of, or alter the designation or duties of an office determined to be requisite, or the salary, designation, or duties of which have been once fixed in pursuance of the above recited section:

And whereas it is expedient that such doubts should be removed, and that the exercise of the said powers or any of them should not be in anywise limited or restricted as aforesaid:

Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Supreme Court of Judicature (Ireland) Act, 1882.

2. The word "office" shall for the purposes of this Act include any clerkship or subor-

dinate employment held by any person in the Supreme Court of Judicature in Ireland, or any division or office thereof.

3. The Lord Chancellor, the Chief Justice, the Chief Justice of the Common Pleas, and the Chief Baron, or any three of them, of whom the Lord Chancellor shall be one, with the concurrence of the Treasury, may from time to time, as occasion may require, exercise all or any of the powers conferred by the said section of the principal Act as fully as if no time had been prescribed in that behalf in the said section, notwithstanding that any office affected thereby may have been previously determined to be requisite, or that the salary, designation, or duties of any office may have been previously fixed under the powers conferred by the principal Act or by this Act, and also notwithstanding that the patronage thereof may be vested in an existing judge: Provided always, that no existing officer shall receive a less salary than heretofore, and that no officer to be hereafter appointed shall, during his tenure of office, have his salary reduced; and provided also, that any rights preserved by the principal Act to any officers existing at the commencement of that Act shall not be affected by this Act.

CHAP. 71.

Appropriation Act, 1882.

ABSTRACT OF THE ENACTMENTS.

Grant out of Consolidated Fund.

1. Issue of 34,357,774l. out of the Consolidated Fund.
2. Power for the Treasury to borrow.

Appropriation of Grants.

3. Appropriation of sums voted for supply services.
4. Treasury may, in certain cases of exigency, authorise expenditure unprovided for; provided that the aggregate grants for the navy services and for the army services respectively be not exceeded.
5. Sanction for navy and army expenditure for 1880-81 unprovided for.
6. Declaration required in certain cases before receipt of sums appropriated.
7. Short title of Act.

SCHEDULES.

An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three, and to appropriate the Supplies granted in this Session of Parliament. (18th August 1882.)

Most Gracious Sovereign,

We, Your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards making good the supply which we have cheerfully granted to Your Majesty in this session of Parliament, have resolved to grant unto Your Majesty the sum herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Grant out of Consolidated Fund.

1. The Commissioners of Her Majesty's Treasury for the time being may issue out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, and apply towards making good the supply granted to Her Majesty for the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three, the sum of thirty-four million three hundred and fifty-seven thousand seven hundred and seventy-four pounds.

2. The Commissioners of Her Majesty's Treasury may borrow from time to time, on the credit of the said sum of thirty-four million three hundred and fifty-seven thousand seven hundred and seventy-four pounds, any sum or sums of equal or less amount in the whole, and shall repay the moneys so borrowed, with interest not exceeding five pounds per centum per annum, out of the growing produce of the Consolidated Fund at any period not later than the next succeeding quarter to that in which the said moneys were borrowed.

Any moneys so borrowed shall be placed to the credit of the account of Her Majesty's Exchequer, and shall form part of the said Consolidated Fund, and be available in any manner in which such fund is available.

Appropriation of Grants.

3. All sums granted by this Act and the

other Acts mentioned in Schedule (A.) annexed to this Act out of the said Consolidated Fund towards making good the supply granted to Her Majesty, amounting, as appears by the said Schedule, in the aggregate, to the sum of fifty-six million eight hundred and seventy-five thousand seven hundred and twelve pounds fourteen shillings and tenpence, are appropriated and shall be deemed to have been appropriated as from the date of the passing of the first of the Acts mentioned in the said Schedule (A.) for the purposes and services expressed in Schedule (B.) annexed hereto.

The abstract of schedules and schedules annexed hereto, with the notes (if any) to such schedules, shall be deemed to be part of this Act in the same manner as if they had been contained in the body thereof.

4. If a necessity arise for incurring expenditure not provided for in the sums appropriated to naval and military services by this Act, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, each of the departments entrusted with the control over the said services shall forthwith make application in writing to the Commissioners of Her Majesty's Treasury for their authority to defray temporarily such expenditure out of any surpluses which may have been or which may be effected by the saving of expenditure upon votes within the same department, and in such application the department shall represent to the Commissioners of the Treasury the circumstances which may render such additional expenditure necessary, and thereupon the said Commissioners may authorise the expenditure unprovided for as aforesaid to be temporarily defrayed out of any surpluses which may have been or which may be effected as aforesaid upon votes within the same department; and a statement showing all cases in which the naval and military departments have obtained the sanction of the said Commissioners to any expenditure not provided for in the respective votes aforesaid, accompanied by copies of the representations made to them by the said departments, shall be laid before the House of Commons with the appropriation accounts of navy and army services for the year, in order that such proceedings may be submitted for the sanction of Parliament, and that provision may be made for the deficiencies upon the several votes for the said services in such manner as Parliament may determine.

The Commissioners of the Treasury shall not authorise any expenditure which may cause an excess upon the aggregate sums appropriated by this Act for naval services and for army services respectively.

5. Whereas the Commissioners of the Treasury, under the powers vested in them by the Act of the session held in the forty-third and forty-fourth years of the reign of Her present Majesty, chapter forty, have authorised expenditure not provided for in the sums appropriated by the said Act to certain votes for naval and military services for the year ended on the thirty-first day of March one thousand eight hundred and eighty-one, to be temporarily defrayed out of the balances (including surpluses of appropriations in aid) unexpended in respect of the sums appropriated to certain other votes for naval and military services for the said year; viz.,

1st. Expenditure of one hundred and two thousand four hundred and twenty-five pounds twelve shillings and ninepence for certain navy services unprovided for, temporarily defrayed out of the unexpended balances of certain votes for navy services, aided by the sum realised in excess of the estimated appropriations in aid.

2nd. Expenditure of two hundred and thirty-two thousand four hundred and seventy-seven pounds nineteen shillings and threepence for certain army services unprovided for, temporarily defrayed out of the un-

expended balances of certain votes for army services, aided by the sum realised in excess of the estimated appropriations in aid:

It is enacted, that the application of the said sums is hereby sanctioned.

6. A person shall not receive any part of a grant which may be made in pursuance of this Act for half pay, or army, navy, or civil non-effective services until he has subscribed such declaration as may from time to time be prescribed by a warrant of the Commissioners of Her Majesty's Treasury before one of the persons prescribed by such warrant.

Provided that, whenever any such payment is made at more frequent intervals than once in a quarter, the Commissioners of Her Majesty's Treasury may dispense with the production of more than one declaration in respect of each quarter.

Any person who makes a declaration for the purpose of this section, knowing the same to be untrue in any material particular, shall be guilty of a misdemeanor.

7. This Act may be cited for all purposes as the Appropriation Act, 1882.

ABSTRACT

OF

SCHEDULES (A.) and (B.) to which this Act refers.

SCHEDULE (A.)

Grants out of the Consolidated Fund	-	-	-	-	-	-	£	s.	d.
							56,875,712	14	10

SCHEDULE (B.)—APPROPRIATION OF GRANTS.

		1881-82.	£	s.	d.	£	s.	d.
Part	1. Deficiencies, 1880-81	-	-	-	-	19,830	14	10
"	2. Supplementary, 1881-82	-	-	-	-	533,284	0	0
"	3. Navy (Supplementary) 1881-82	-	-	-	-	50,000	0	0
"	4. Zulu, &c. Wars, 1881-82	-	-	-	-	135,000	0	0
						738,114	14	10

1882-83.										£	s.	d.			
Part	5.	Navy	-	-	-	-	-	-	-	10,483,901	0	0			
"	6.	Army	-	-	-	-	-	-	-	15,458,100	0	0			
"	7.	Army (Indian Home Charges)							-	-	1,100,000	0	0		
"	8.	Civil Services, Class I.	-	-	-	-	-	-	£	1,870,995					
"	9.	Ditto, Class II.	-	-	-	-	-	-		2,387,286					
"	10.	Ditto, Class III.	-	-	-	-	-	-		6,648,575					
"	11.	Ditto, Class IV.	-	-	-	-	-	-		4,581,034					
"	12.	Ditto, Class V.	-	-	-	-	-	-		646,139					
"	13.	Ditto, Class VI.	-	-	-	-	-	-		1,180,870					
"	14.	Ditto, Class VII.	-	-	-	-	-	-		35,152					
TOTAL CIVIL SERVICES										-	-	-	17,350,051	0	0
"	15.	Revenue Departments, &c.	-	-	-	-	-	-	-	8,790,069	0	0			
"	16.	Advances for Greenwich Hospital and School	-	-	-	-	-	-	-	155,457	0	0			
"	17.	Forces in the Mediterranean (Vote of Credit)	-	-	-	-	-	-	-	2,300,000	0	0			
"	18.	Afghan War (Grant in Aid)	-	-	-	-	-	-	-	500,000	0	0			
										£56,875,712	14	10			

SCHEDULE (A.)

GRANTS OUT OF THE CONSOLIDATED FUND.

For the service of the years ending 31st March 1881 and 1882; viz.:—

	£	s.	d.
Under Act 45 Vict. cap. 1.	-	-	-
Under Act 45 Vict. cap. 4.	-	-	-
For the service of the year ending 31st March 1883:—			
Under Act 45 Vict. c. 4.	-	-	-
Under Act 45 Vict. c. 8.	-	-	-
Under Act 45 & 46 Vict. c. 28.	-	-	-
Under this Act -	-	-	-
TOTAL	56,875,712	14	10

SCHEDULE (B.)—PART 1.

DEFICIENCIES.

SCHEDULE of SUMS granted to make good deficiencies on the several grants herein particularly mentioned for the year ended on the 31st day of March 1881 : viz. :—

CIVIL SERVICES.

[illegible]

CLASS IV.						£	s.	d.
Science and Art Department of the United Kingdom	-	-	-	-	-	240	9	2
CLASS V.								
Consular Services	-	-	-	-	-	4,641	14	10
Suez Canal (British Directors)	-	-	-	-	-	31	7	4
Suppression of the Slave Trade	-	-	-	-	-	457	9	11
TOTAL	-	-	-	-	-	19,830	14	10

SCHEDULE (B).—PART 2.

SUPPLEMENTARY.

SCHEDULE of SUPPLEMENTARY SUMS granted to defray the charges for the Services herein particularly mentioned for the year ended on the 31st day of March 1882; viz. :—

CIVIL SERVICES.						£
CLASS I.						
Royal Palaces	-	-	-	-	-	2,094
Royal Parks	-	-	-	-	-	800
Public Buildings, Great Britain	-	-	-	-	-	1,800
Sheriff Court Houses, Scotland	-	-	-	-	-	1,000
Harbours, &c., under the Board of Trade	-	-	-	-	-	1,096
Rates on Government Property	-	-	-	-	-	527
Shannon Navigation	-	-	-	-	-	3,000
CLASS II.						
Foreign Office	-	-	-	-	-	2,300
Colonial Office	-	-	-	-	-	6,300
Civil Service Commission	-	-	-	-	-	2,300
Friendly Societies Registry	-	-	-	-	-	215
Local Government Board, England	-	-	-	-	-	5,140
Stationery and Printing	-	-	-	-	-	19,600
Office of Works and Public Buildings	-	-	-	-	-	850
Fishery Board, Scotland	-	-	-	-	-	286
Household of Lord Lieutenant of Ireland	-	-	-	-	-	20
Chief Secretary for Ireland Offices	-	-	-	-	-	900
Local Government Board, Ireland	-	-	-	-	-	2,410
Public Works Office, Ireland	-	-	-	-	-	1,300
CLASS III.						
Law Charges, England	-	-	-	-	-	18,000
Chancery Division of High Court of Justice, &c.	-	-	-	-	-	3,825
County Courts	-	-	-	-	-	16,087
Police Courts, London and Sheerness	-	-	-	-	-	360
Police, Counties and Boroughs, Great Britain	-	-	-	-	-	2,000
Courts of Law and Justice, Scotland	-	-	-	-	-	1,573
Register House Departments, Edinburgh	-	-	-	-	-	470
Law Charges and Criminal Prosecutions, Ireland	-	-	-	-	-	19,000
Irish Land Commission	-	-	-	-	-	34,919
County Court Officers, &c., Ireland	-	-	-	-	-	7,772
Constabulary of Ireland	-	-	-	-	-	116,547

CLASS IV.						£
Science and Art Department	-	-	-	-	-	7,400
London University	-	-	-	-	-	40
Transit of Venus, 1882	-	-	-	-	-	275
Queen's University, Ireland	-	-	-	-	-	472
Royal University, Ireland	-	-	-	-	-	636
CLASS V.						
Diplomatic Services	-	-	-	-	-	20,860
Consular Services	-	-	-	-	-	12,794
Grants in Aid of Expenditure in certain Colonies	-	-	-	-	-	1,500
Transvaal and Zululand	-	-	-	-	-	4,356
Subsidies to Telegraph Companies	-	-	-	-	-	5,526
Treasury Chest	-	-	-	-	-	9,333
CLASS VI.						
Superannuation and Retired Allowances	-	-	-	-	-	3,000
Pauper Lunatics, Scotland	-	-	-	-	-	268
Miscellaneous, Charitable, and other Allowances, Great Britain	-	-	-	-	-	350
Commutation of Annuities	-	-	-	-	-	624
CLASS VII.						
Miscellaneous Expenses	-	-	-	-	-	4,145
Repayments to the Civil Contingencies Fund	-	-	-	-	-	6,214
Compensation to Edmund Galley	-	-	-	-	-	1,000
REVENUE DEPARTMENTS.						
Customs	-	-	-	-	-	22,000
Post Office	-	-	-	-	-	80,000
Post Office Telegraphs	-	-	-	-	-	80,000
TOTAL						<u>£533,284</u>

SCHEDULE (B.)—PART 3.

NAVY (SUPPLEMENTARY, 1881-82).

For defraying the expenses incurred during the year ended on the 31st day of March 1882, for freight, &c., on account of the Army Department in connection with the outbreak of hostilities in the Transvaal, viz.:	£
Vote 17. For freight of ships, for the victualling and conveyance of troops, on account of the Army Department	50,000

SCHEDULE (B.)—PART 4.

ZULU, &c. WARS, 1881-82.

For defraying Expenditure connected with the Zulu and other Wars in South Africa, prior to the late hostilities in the Transvaal	£
	<u>135,000</u>

SCHEDULE (B.)—PART 5.

NAVY.

SCHEDULE of SUMS granted to defray the charges of the NAVY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz. :—

		Sums not exceeding
No.		£
1.	For wages, &c. to 57,500 seamen and marines	2,631,498
2.	For victuals and clothing for seamen and marines	996,091
3.	For the expenses of the Admiralty Office	181,089
4.	For the expense of the coast guard service, the royal naval reserve, and seamen and marine pensioners reserve, and royal naval artillery volunteers	195,416
5.	For the expense of the several scientific departments of the navy	113,691
6.	For the expense of the dockyards and naval yards at home and abroad	1,447,258
7.	For the expense of the victualling yards at home and abroad	70,787
8.	For the expense of the medical establishments at home and abroad	64,465
9.	For the expense of the Marine Divisions	22,016
10.	Sect. 1. For naval stores for building, repairing, and out-fitting the fleet and coast guard	1,122,500
11.	Sect. 2. For steam machinery, and ships built by contract, &c.	767,153
12.	For new works, buildings, machinery, and repairs in the naval establishments	479,603
13.	For medicines, medical stores, &c.	69,375
14.	For martial law, &c.	9,973
15.	For the expense of various miscellaneous services	118,936
16.	For half pay, reserved half pay, and retired pay to officers of the navy and marines	873,688
17.	Sect. 1. For military pensions and allowances	866,127
18.	Sect. 2. For civil pensions and allowances	330,535
19.	For freight of ships, for the victualling and conveyance of troops, on account of the army department	123,700
TOTAL NAVY SERVICES		£ 10,483,901

SCHEDULE (B.)—PART 6.

ARMY.

SCHEDULE of SUMS granted to defray the charges for the ARMY SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz. :—

		Sums not exceeding
No.		£
1.	For the general staff and regimental pay, allowances, and charges of Her Majesty's land forces at home and abroad, exclusive of charges on India	4,162,000
2.	For divine service	53,800
3.	For administration of military law	37,200

No.		Sums not exceeding
		£
4.	For medical establishments and services	300,800
5.	For the pay and allowances of a force of militia, not exceeding 138,274 men, including 28,000 militia reserve	492,000
6.	For the yeomanry cavalry pay and allowances	69,000
7.	For the volunteer corps pay and allowances	562,700
8.	For the pay and allowances of a number of army reserve first class, not exceeding 26,000, and of the army reserve second class	229,500
9.	For commissariat, transport and ordnance store establishments, wages, &c.	394,300
10.	For provisions, forage, fuel, transport and other services	2,966,000
11.	For clothing establishments, services, and supplies	734,000
12.	For the supply, manufacture, and repair of warlike and other stores, including establishments of manufacturing departments	1,289,500
13.	For superintending establishment of, and expenditure for, works, buildings, and repairs at home and abroad	715,700
14.	For establishments for military education	127,500
15.	For miscellaneous effective services	36,400
16.	For the salaries and miscellaneous charges of the War Office	238,200
17.	For rewards for distinguished services, &c., exclusive of charges on India	26,700
18.	For half-pay, &c., of field marshals, and of general, regimental, and Departmental officers, exclusive of charges on India	95,000
19.	For retired pay, retired full pay, and gratuities, for reduced and retired officers, including payments awarded by Army Purchase Commissioners, exclusive of charges on India	1,116,100
20.	For widows' pensions and gratuities, for allowances on the compassionate list, and for the relief fund, &c., exclusive of charges on India	123,200
21.	For pensions for wounds	15,500
22.	For Chelsea and Kilmainham hospitals, and the in-pensioners thereof	33,800
23.	For the out-pensioners of Chelsea Hospital, &c., exclusive of charges on India	1,389,700
24.	For superannuation allowances	197,700
25.	For the non-effective services of the militia, yeomanry, cavalry, and volunteer corps	51,800
TOTAL ARMY SERVICES -		£ 15,458,100

SCHEDULE (B.)—PART 7.

ARMY (INDIAN HOME CHARGES).

For the sum to be transferred in aid of Army Grants to meet the charge incurred in recruiting and training officers and men, and in defraying the non-effective expenditure for the regular forces serving in India, which will come in course of payment during the year ending on the 31st day of March 1883

£ 1,100,000

SCHEDULE (B).—PART 8.

CIVIL SERVICES.—CLASS I.

SCHEDULE of Sums granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz. :—

No.	Sums not exceeding
	£
1. For the maintenance and repair of the royal palaces	40,361
2. For the maintenance and repair of Marlborough House	2,878
3. For the royal parks and pleasure gardens (including a supplementary sum of 3,000 <i>l.</i>)	113,921
4. For the buildings of the Houses of Parliament	37,110
4A. For the execution and erection of a statue in the Collegiate Church of St. Peter, Westminster, to the memory of the late Right Honourable Benjamin Disraeli, Earl of Beaconsfield, K.G., P.C.	1,050
5. For the maintenance and repair of public buildings in Great Britain and the Isle of Man, including various special works; for providing the necessary supply of water; for rents of houses hired for accommodation of public departments, and charges attendant thereon, &c.	148,064
6. For the supply and repair of furniture in the public departments of Great Britain	17,360
7. For the expenses of the Customs, Inland Revenue, Post Office, and Post Office Telegraph Buildings, in Great Britain, including furniture, fuel, and sundry miscellaneous services	257,011
8. For new buildings for county courts, maintenance and repair of courts, supply of furniture, fuel, &c., and other charges attendant thereon	50,480
9. For charges connected with Metropolitan Police Court Buildings	6,598
10. For one half of the expense of erecting or improving court houses or offices for the sheriff courts in Scotland, and the expense of maintaining the courts erected or improved	7,195
11. For the purchase of a site, erection of building, and other expenses for the new courts of justice and offices belonging thereto	117,200
12. For the survey of the United Kingdom, including the revision of the survey of Ireland, maps for use in proceedings before the Land Judges in Ireland, publication of maps, and engraving the geological survey	215,000
13. For erecting and maintaining new buildings, including rents, &c., for the Department of Science and Art	25,099
14. For the maintenance and repair of the British Museum and Natural History Museum buildings, for rents of premises, supply of water, fuel, &c., and charges attendant thereon	7,247
15. For the erection and fittings of a Natural History Museum (including a supplementary sum of 25,000 <i>l.</i>)	70,858
16. For maintaining certain harbours, &c., under the Board of Trade	8,695
17. For rates and contributions in lieu of rates in respect of Government property, and for salaries and expenses of the rating of Government property department	201,088
18. For contribution to the funds for the establishment and maintenance of a fire brigade in the metropolis	10,000
18A. In aid of the costs of maintenance of disturnpiked and main roads, during the year ended on the 28th day of March, or Whitsuntide 1882, in England, Wales, and Scotland	250,000
19. For erection, repairs, and maintenance of the several public works and buildings under the department of the Commissioners of Public Works in Ireland, and for the erection of fishery piers, and the maintenance of certain parks, harbours, and navigations (including a supplementary sum of 3,645 <i>l.</i>)	193,853

No.		Sums not exceeding	
		£	
19A.	For the purchase of site and buildings for the purposes of the Royal University, Ireland - - - - -	27,000	
20.	For expenses preparatory to, and of the erection of the Museum of Science and Art in Dublin, and of additions to the School of Art in Dublin - - - - -	10,000	
21.	For works to regulate the flood waters of the River Shannon - - - - -	10,512	
22.	For erecting and maintaining certain lighthouses abroad - - - - -	10,650	
23.	For diplomatic and consular buildings, including rents and furniture, and for the maintenance of certain cemeteries abroad (including a supplementary sum of 6,000 <i>l.</i>) - - - - -	31,765	
TOTAL CIVIL SERVICES, CLASS I. - - - - -		£	1,870,995

SCHEDULE (B.)—PART 9.

CIVIL SERVICES.—CLASS II.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz. :—

No.		Sums not exceeding	
		£	
1.	For salaries and expenses in the offices of the House of Lords - - - - -	43,105	
2.	For salaries and expenses in the offices of the House of Commons - - - - -	50,461	
3.	For salaries and expenses of the Department of Her Majesty's Treasury and in the office of the Parliamentary Counsel - - - - -	56,653	
4.	For salaries and expenses of the office of Her Majesty's Secretary of State for the Home Department and subordinate offices - - - - -	92,234	
5.	For salaries and expenses of the department of Her Majesty's Secretary of State for Foreign Affairs - - - - -	70,847	
6.	For salaries and expenses of the department of Her Majesty's Secretary of State for the Colonies, including certain expenses connected with Emigration - - - - -	39,720	
7.	For salaries and expenses of the department of Her Majesty's Most Honorable Privy Council and subordinate departments - - - - -	30,438	
8.	For salaries and expenses of the office of the Lord Privy Seal - - - - -	2,855	
9.	For salaries and expenses of the office of the Committee of Privy Council for Trade, and subordinate departments - - - - -	176,270	
10.	For salaries and expenses of the Charity Commission for England and Wales - - - - -	30,496	
11.	For salaries and expenses of the Civil Service Commission - - - - -	31,738	
12.	For salaries and expenses of the office of the Copyhold, Inclosure, and Tithe Commission - - - - -	16,916	
13.	For imprest expenses under the Inclosure and Drainage Acts - - - - -	2,750	
14.	For salaries and expenses of the department of the Comptroller and Auditor General, including the Chancery Audit Branch - - - - -	57,974	
15.	For salaries and expenses of the Registry of Friendly Societies - - - - -	6,372	
16.	For salaries and expenses of the Local Government Board, including various grants in aid of local taxation - - - - -	428,145	
17.	For salaries and expenses of the office of the Commissioners in Lunacy in England - - - - -	15,071	
18.	For salaries and expenses of the Mint, including the expenses of the coinage - - - - -	82,357	

No.	Sums not exceeding
	£
19. For salaries and expenses of the National Debt Office - - -	14,621
20. For charges connected with the Patent Law Amendment Act, the Registration of Trade Marks Act, and the Registration of Designs Act - -	30,849
21. For salaries and expenses of the department of Her Majesty's Paymaster General in London and Dublin - - -	26,126
22. For salaries and expenses of the establishments under the Public Works Loan Commissioners - - -	9,268
23. For salaries and expenses of the Public Record Office in England - -	22,466
24. For salaries and expenses of the department of the Registrar General of Births, &c. in England - - -	69,426
25. For stationery, printing, and paper, binding, and printed books, for the several departments of Government in England, Scotland, and Ireland, and some dependencies, and for the two Houses of Parliament; for the salaries and expenses of the Establishment of the Stationery Office, and the cost of Stationery Office publications, and of the Gazette Offices; and for sundry miscellaneous services, including a grant in aid of the publication of Parliamentary Debates - - -	529,450
26. For salaries and expenses of the office of Woods, Forests, and Land Revenues, and of the office of Land Revenue Records and Inrolments - - -	23,187
27. For salaries and expenses of the office of the Commissioners of Her Majesty's Works and Public Buildings - - -	46,480
28. For Her Majesty's foreign and other secret services - - -	23,000
29. For salaries and expenses of the department of the Queen's and Lord Treasurer's Remembrancer in Exchequer, Scotland, of certain officers in Scotland, and other charges formerly on the hereditary revenue - -	6,671
30. For salaries and expenses of the Fishery Board in Scotland, and for grants in aid of piers or quays - - -	16,307
31. For salaries and expenses of the Board of Lunacy in Scotland - - -	5,994
32. For salaries and expenses of the department of the Registrar General of Births, &c., in Scotland - - -	7,737
33. For salaries and expenses of the Board of Supervision for Relief of the Poor, and for expenses under the Public Health and Vaccination Acts, including certain grants in aid of local taxation in Scotland (including a supplementary sum of 10,000L.) - - -	28,621
34. For salaries of the officers and attendants of the household of the Lord Lieutenant of Ireland and other expenses - - -	7,587
35. For salaries and expenses of the offices of the Chief Secretary to the Lord Lieutenant of Ireland, in Dublin and London, and subordinate departments - -	39,606
36. For salaries and expenses of the office of the Commissioners of Charitable Donations and Bequests for Ireland - - -	2,103
37. For salaries and expenses of the Local Government Board in Ireland, including various grants in aid of local taxation - - -	135,244
38. For salaries and expenses of the Office of Public Works in Ireland - -	44,531
39. For salaries and expenses of the Public Record Office and of the Keeper of the State Papers in Ireland - - -	6,170
40. For salaries and expenses of the department of the Registrar General of Births, &c., and for expenses of the collection of agricultural and emigration statistics in Ireland - - -	28,552
41. For salaries and expenses of the general valuation and boundary survey of Ireland - - -	24,388
TOTAL CIVIL SERVICES, CLASS II. - £	2,387,286

SCHEDULE (B.)—PART 10.

CIVIL SERVICES.—CLASS III.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz.:—

No.		Sums not exceeding
		£
1.	For the salaries of the law officers, the salaries and expenses of the department of the Solicitor for the affairs of Her Majesty's Treasury, and of the department of the Queen's Proctor for divorce interventions, the costs of prosecutions, including those relating to the coin and to bankruptcy, and of other legal proceedings conducted by those departments, and various other legal expenses, including Statute Law Revision and Parliamentary Agency -	83,138
2.	For the salaries and expenses of the office of the Director of Public Prosecutions -	3,831
3.	For criminal prosecutions at assizes and quarter sessions in England, and for adjudications under the Summary Jurisdiction Act, 1879, for sheriffs expenses, salaries to clerks of assize and other officers, compensation to clerks of the peace and others, and for expenses incurred under Extradition Treaties -	190,436
4.	For such of the salaries and expenses of the Chancery Division of the High Court of Justice, of the Court of Appeal, and of the Supreme Court of Judicature, exclusive of the Central Office, as are not charged on the Consolidated Fund -	167,017
5.	For the salaries and expenses of the Central Office of the Supreme Court of Judicature, the salaries and expenses of the Judges' Clerks and other officers of the District Registrars of the High Court, the remuneration of the Judges' Marshals, and certain circuit and other expenses -	116,209
6.	For salaries and expenses of the Registries of Probate and Divorce and Matrimonial Causes, &c., in the Probate, Divorce, and Admiralty Division of the High Court of Justice -	92,990
7.	For salaries and expenses of the offices of the Admiralty Registrar and Marshal of the Probate, Divorce, and Admiralty Division of the High Court of Justice -	11,162
8.	For salaries and expenses of the office of the Wreck Commissioner -	13,471
9.	For such of the salaries and expenses of the London Bankruptcy Court as are not charged on the Consolidated Fund -	35,136
10.	For salaries and expenses connected with the County Courts -	475,039
11.	For salaries and expenses of the Office of Land Registry -	5,442
12.	For the expense of revising barristers in England -	18,690
13.	For salaries and expenses of the police courts of London and Sheerness -	15,556
14.	For contribution towards the expenses of the metropolitan police, and of the horse patrol, and Thames police, and for the salaries of the Commissioner, Assistant Commissioners, and Receiver -	496,858
15.	For certain expenses connected with the police in counties and boroughs in England and Wales, and with the police in Scotland -	938,298
16.	For the superintendence of convict establishments and for the maintenance of convicts in convict establishments in England and the Colonies -	424,677
17.	For the salaries and expenses of the Commissioners and other officers appointed under the 6th and 7th sections of the Prison Act, 1877, and the expenses of the several prisons in England and Wales to which that Act applies (including a supplementary sum of 103,000 <i>l.</i>) -	566,804
18.	For the maintenance of juvenile offenders in reformatory, industrial, and day industrial schools in Great Britain, and for the salaries and expenses of the Inspectors of Reformatories -	270,643

No.		Sums not exceeding
		£
19.	For the maintenance of criminal lunatics in Broadmoor Criminal Lunatic Asylum, England, and of one criminal lunatic in Bethlem Hospital	26,142
20.	For salaries and expenses of the Lord Advocate's department and others connected with criminal proceedings in Scotland, including certain allowances under the Act 15 & 16 Vict. c. 83.	65,260
21.	For salaries and expenses of the Courts of Law and Justice in Scotland and other legal charges	61,200
22.	For salaries and expenses of the offices in Her Majesty's General Register House, Edinburgh	38,383
23.	For the expenses of the Prison Commissioners for Scotland, and of the prisons under their control, including the maintenance of criminal lunatics and the preparation of judicial statistics	120,987
24.	For the expense of criminal prosecutions and other law charges in Ireland, including certain allowances under the Act 15 & 16 Vict. c. 83.	86,396
25.	For such of the salaries and expenses of the Supreme Court of Judicature in Ireland as are not charged on the Consolidated Fund	89,806
26.	For salaries and incidental expenses of the Court of Bankruptcy in Ireland	10,170
27.	For salaries and expenses of the Admiralty Court Registry in Ireland	1,280
28.	For salaries and expenses of the Office for the Registration of Deeds in Ireland	18,976
29.	For salaries and expenses in the Office for the Registration of Judgments in Ireland	2,607
30.	For the salaries and expenses of the Office of the Irish Land Commission	92,552
31.	For the salaries, allowances, and expenses of various county court officers, and of magistrates in Ireland, and of the revising barristers of the city of Dublin	98,238
32.	For salaries and expenses of the Commissioners of Police, of the police courts and of the metropolitan police establishment of Dublin	135,317
33.	For the expenses of the Constabulary Force in Ireland (including a supplementary sum of 300,000 <i>l.</i>)	1,632,146
34.	For the expense of the superintendence of prisons, and of the maintenance of prisoners in prisons in Ireland, and of the registration of habitual criminals	150,704
35.	For the expenses of reformatories and industrial schools in Ireland	96,308
36.	For the maintenance of criminal lunatics in Dundrum Criminal Lunatic Asylum, Ireland	6,706
TOTAL CIVIL SERVICES, CLASS III.-		£ 6,648,575

SCHEDULE (B).—PART 11.

CIVIL SERVICES.—CLASS IV.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz. :—

No.		Sums not exceeding
		£
1.	For public education in England and Wales, including the expenses of the Education Office in London	2,749,863
2.	For salaries and expenses of the Department of Science and Art, and of the establishments connected therewith	351,400
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No.	Sums not exceeding
	£
3. For salaries and expenses of the British Museum, including the amount required for the Natural History Museum - - - - -	137,375
4. For salaries and expenses of the National Gallery (including a supplementary sum of 16,000 <i>l.</i>) - - - - -	33,878
5. For salaries and expenses of the National Portrait Gallery (including a supplementary sum of 1,977 <i>l.</i>) - - - - -	4,562
6. For grants in aid of the expenditure of certain learned societies in Great Britain and Ireland (including a supplementary sum of 6,500 <i>l.</i>) - - - - -	27,400
7. For salaries and expenses of the University of London - - - - -	11,631
7A. In aid of the expenses of Aberystwith College - - - - -	2,000
8. For preparing an account of the scientific results of the expedition of Her Majesty's ship "Challenger" in 1873, 1874, 1875, and 1876, to investigate the physical and biological conditions of the great ocean basins, and of arranging the collections made during the expedition - - - - -	4,100
8A. For the salaries and expenses connected with observations of the Transit of Venus 1882 - - - - -	14,680
9. For public education in Scotland - - - - -	468,512
10. For grants to Scottish universities - - - - -	19,032
11. For the annuity to the Board of Trustees of manufactures in Scotland, in discharge of equivalents under the Treaty of Union, to be applied in maintenance of the National Gallery, School of Art and Museum of Antiquities, Scotland, and for the exhibition of the Torrie Collection of Works of Art, and for other purposes - - - - -	2,100
12. For public education under the Commissioners of National Education in Ireland - - - - -	730,461
13. For the salaries and expenses of the National School Teachers' Superannuation Office, Dublin - - - - -	1,798
14. For the salary and expenses of the Office of the Commissioners of Education in Ireland appointed for the regulation of endowed schools - - - - -	725
15. For salaries and expenses of the National Gallery of Ireland, and for the purchase of pictures (including a supplementary sum of 1,000 <i>l.</i>) - - - - -	3,339
16. In aid of the expenses of the Queen's Colleges in Ireland - - - - -	16,178
17. In aid of the expenses of the Royal Irish Academy - - - - -	2,000
TOTAL CIVIL SERVICES, CLASS IV. - - - - -	£ 4,581,034

SCHEDULE (B).—PART 12.

CIVIL SERVICES.—CLASS V.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz.:—

No.	Sums not exceeding
	£
1. For expenses of Her Majesty's embassies and missions abroad - - - - -	202,320
2. For consular establishments abroad, and for other expenditure chargeable on the Consular Vote - - - - -	258,100
3. For expenses of the mixed commissions established under the treaties with foreign powers for suppressing the traffic in slaves, and of other establishments in connection with that object, including the Muscat subsidy - - - - -	5,973

No.		Sums not exceeding
		£
4.	For tonnage bounties, bounties on slaves, costs of captors, &c., and expenses of the Liberated African Department	10,796
5.	For salaries and expenses of the three representatives of Her Majesty's Government on the Council of Administration of the Suez Canal Company	1,670
6.	In aid of colonial local revenue, and for the salaries and allowances of governors, &c., and for other charges connected with the colonies, including expenses incurred under the Pacific Islanders Protection Act, 1875	29,835
7.	For certain charges connected with the Orange River Territory, the Transvaal, Zululand, and the island of St. Helena (including a supplementary sum of 2,200 <i>l.</i>)	12,145
8.	For subsidies to telegraph companies and for the salary of the Official Director	35,300
9.	In aid of the revenue of the island of Cyprus	90,000
TOTAL CIVIL SERVICES, CLASS V.		£ 646,139

SCHEDULE (B.)—PART 13.

CIVIL SERVICES.—CLASS VI.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz.:—

No.		Sums not exceeding
		£
1.	For superannuation and retired allowances to persons formerly employed in the public service, and for compassionate or other special allowances and gratuities awarded by the Commissioners of Her Majesty's Treasury	448,582
2.	For pensions to masters and seamen of the merchant service, and to their widows and children	24,800
3.	For the relief of distressed British seamen abroad	30,900
4.	In aid of the local cost of maintenance of pauper lunatics in England and Wales	433,500
5.	In aid of the local cost of maintenance of pauper lunatics in Scotland	80,000
6.	In aid of the local cost of maintenance of pauper lunatics in Ireland	90,000
7.	For the support of certain hospitals and infirmaries in Ireland	16,925
8.	For making good the deficiency arising from payments for interest to friendly societies	49,326
9.	For miscellaneous, charitable, and other allowances in Great Britain	3,029
10.	For certain miscellaneous, charitable, and other allowances in Ireland	3,808
TOTAL CIVIL SERVICES, CLASS VI.		£ 1,180,870

SCHEDULE (B.)—PART 14.

CIVIL SERVICES.—CLASS VII.

SCHEDULE of SUMS granted to defray the charges of the several CIVIL SERVICES herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz.:—

No.		Sums not exceeding
		£
1.	For salaries and incidental expenses of temporary commissions and committees, including special inquiries - - - - -	25,941
2.	For certain miscellaneous expenses - - - - -	9,211
TOTAL CIVIL SERVICES, CLASS VII. - £		35,152

SCHEDULE (B.)—PART 15.

REVENUE DEPARTMENTS, &c.

SCHEDULE of SUMS granted to defray the charges of the several REVENUE DEPARTMENTS, &c., herein particularly mentioned, which will come in course of payment during the year ending on the 31st day of March 1883; viz.:—

No.		Sums not exceeding
		£
1.	For salaries and expenses of the Customs Department - - - - -	993,155
2.	For salaries and expenses of the Inland Revenue Department - - - - -	1,907,822
3.	For salaries and expenses of the Post Office services, the expenses of Post Office savings banks, and Government annuities and insurances, and the collection of the Post Office revenue - - - - -	3,743,300
4.	For the Post Office packet service - - - - -	710,514
5.	For salaries and expenses of the Post Office telegraph service - - - - -	1,435,298
TOTAL REVENUE DEPARTMENTS - £		8,790,089

SCHEDULE (B.)—PART 16.

GREENWICH HOSPITAL AND SCHOOL.

Advances during the year ending on the 31st day of March 1883 for defraying the expenses of Greenwich Hospital and School - - - - -	£
	155,457

SCHEDULE (B.)—PART 17.

FORCES IN THE MEDITERRANEAN.—VOTE OF CREDIT.

Towards defraying the expenses, beyond the ordinary grants of Parliament, which may be incurred during the year ending on the 31st day of March 1883, in strengthening Her Majesty's Forces in the Mediterranean, including the cost of a further number of land forces of 10,000 men	£ 2,300,000
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SCHEDULE (B.)—PART 18.

AFGHAN WAR (GRANT IN AID).

For paying an instalment of a grant in aid of the expenditure incurred by the Government of India upon the war in Afghanistan, in the years 1878-80, which will become due and payable during the year ending on the 31st day of March 1883	£ 500,000
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CHAP. 72.

Revenue, Friendly Societies, and National Debt Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*

PART I.

CUSTOMS AND EXCISE.

2. *Upon revocation of approval of a customs warehouse goods to be cleared or removed.*
3. *Salaries and superannuation allowances to officers not subject to execution or attachment.*
4. *Amendment of the law as to the persons entitled to receive the allowances on British spirits.*
5. *Amendment of section 9 of 43 & 44 Vict. c. 24.*
6. *Person charged with an offence against section 4 of 23 & 24 Vict. c. 90. may be convicted of an offence against section 7 of 33 & 34 Vict. c. 57.*
7. *Amendment of 43 & 44 Vict. c. 19.*

PART II.

STAMPS.

8. *Stamp duty on grants of superannuation annuities.*
9. *Exemption of certain drafts and receipts for public purposes.*
10. *Exemption from stamp duty of certain agreements under 44 & 45 Vict. c. 49.*
11. *Returns by banking companies, subject to 25 & 26 Vict. c. 89, &c.*
12. *Power to Treasury to grant compensation for loss of fees under 44 & 45 Vict. c. 12. ss. 33 and 34.*
13. *Assimilation of certain adhesive stamps for stamp duties and postage duties.*
14. *Provision as to cancellation where two or more adhesive stamps are used for a stamp duty.*
15. *Extension of interpretation of section 25 of 33 & 34 Vict. c. 97.*
16. *The stamp duties granted in respect of letters patent for inventions, and on the certificate of registration of a design, to be deemed public office fees, and not stamp duties.*
17. *Provision for composition for stamp duty on certain Canadian loans.*

PART III.

NATIONAL DEBT AND MISCELLANEOUS.

18. *Adjustment of account as regards accumulations of fractions of a penny on the dividends of the National Debt.*
19. *Quarterly payment of dividends on 2½ per cents.*
20. *Termination of fortification loans.*
21. *Guarantee from the Consolidated Fund of moneys due from the National Debt Commissioners to Friendly Societies. Investment of moneys belonging to Friendly Societies.*
22. *Advance of money by National Debt Commissioners for payment of commutation under 41 & 42 Vict. c. 63.*
23. *Amendment of 36 & 37 Vict. c. 57. so far as regards permanent charges on the Consolidated Fund payable to ecclesiastical corporations.*
24. *Removal of doubts as to Crown rights to escheats, fines, and recognizances within certain liberties of the Duchy of Lancaster.*
25. *Amendment of 21 & 22 Vict. c. 72. and 40 & 41 Vict. c. 57. as to fees in proceedings under Land Judges, Ireland.*
26. *Definitions.*

SCHEDULES.

An Act for amending the Laws relating to Customs and Inland Revenue, and Postage and other Stamps, and for making further provision respecting the National Debt and charges payable out of the public revenue or by the Commissioners for the Reduction of the National Debt; and for other purposes. (18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Revenue, Friendly Societies, and National Debt Act, 1882.

PART I.

CUSTOMS AND EXCISE.

2. (1.) If the Commissioners of Customs shall for any reasonable cause at any time revoke an order approving a warehouse, the duties on all the warehoused goods therein shall be paid or the goods shall be exported or removed to another approved warehouse within such time, not less than three months, as the Commissioners shall direct. Notice in writing of revocation or of the directions of the Commissioners, addressed to the proprietor or occupier of the warehouse and left thereat, shall be deemed to be notice to all persons interested in the goods. Such notice shall be advertised not less than four times at intervals

of not less than fifteen days previous to the expiry of the said term of three months.

(2.) If any goods shall not be duly cleared or removed in conformity with this section, such goods shall be taken to a Queen's warehouse by the officers of customs, and shall be liable to be sold for the same purposes and in the same manner as goods taken to the Queen's warehouse under section sixty-one of the Customs Consolidation Act, 1876.

3. No salary or sum of money granted or allowed to any officer of customs or person employed in the collection, receipt, or management of the customs revenue, and no sum of money allowed as or by way of compensation for past services, or upon the superannuation or retirement of such officer or person, shall be subject or liable to be seized or taken under or by virtue of any process whatsoever before the same shall have been actually paid to or for the use of the officer or person to whom the same shall have been granted or allowed.

4. The allowances of twopence and fourpence per gallon payable in respect of British spirits by virtue of section four of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter one hundred and twenty-nine, and section sixteen of the Customs and Inland Revenue Act, 1881, shall be paid, in the case of spirits exported, to the person who shall have given security for the exportation, and in the case of spirits used in warehouse, to the person upon whose written request the spirits shall have been so used, and any provision in the law to the contrary is hereby repealed.

5. The rent charged for the lodgings, unfurnished, of officers of Inland Revenue in

charge of a distillery for which a licence is granted under subsection two of section nine of the Spirits Act, 1880, must not exceed fifteen pounds a year in respect of each officer, unless the Commissioners of Inland Revenue, with the concurrence of the Commissioners of Her Majesty's Works and Public Buildings and the approval of the Treasury, shall agree for the payment of a higher rent.

6. If upon the hearing of an information exhibited against any person for recovery of the penalty imposed by the fourth section of the Act of the twenty-third and twenty-fourth years of Her Majesty's reign, chapter ninety, it shall be proved that such person used or carried a gun without having in force a proper licence under the Gun Licence Act, 1870, he shall not be entitled to be wholly acquitted by reason of a failure to prove an offence against the said section, but the Court before whom the said information is heard shall be at liberty to acquit him of the charge contained in the said information and convict him of an offence against the seventh section of the Gun Licence Act, 1870, and order him to pay the penalty thereby imposed.

7. Notwithstanding anything contained in the Taxes Management Act, 1880, section sixty of the Act of the session of the forty-third year of the reign of King George the Third, chapter one hundred and sixty-one, intituled "An Act for repealing the several duties under the management of the Commissioners for the Affairs of Taxes, and granting new duties in lieu thereof; for granting new duties in certain cases therein mentioned; for repealing the duties of excise on licences and on carriages constructed by coachmakers, and granting new duties thereon, under the management of the said Commissioners for the Affairs of Taxes, and also new duties on persons selling carriages by auction or on commission," shall be deemed to have continued in force since the time of the passing of the said Taxes Management Act, 1880, to the same extent to which it was in force at that time.

The following portions of section fifty-nine of the Taxes Management Act, 1880, are hereby repealed; that is to say,

(a.) In section fifty-nine, subsection (2) (b), the words "and all such orders shall be final and conclusive on all parties:"

(b.) In subsection (2) (d) of the same section the words "of the High Court" after the word "orders," and in subsection (4) of the same section the words "therein referred to."

In the said section fifty-nine, subsection (2) (e),

is hereby repealed as regards England and Ireland.

PART II.

STAMPS.

8. In lieu of the stamp duty chargeable thereon by virtue of the Stamp Act, 1870, there shall be charged on any grant or contract for payment of a superannuation annuity as herein-after defined the duty following; (that is to say):—

For every full sum of 5 <i>l.</i> and also	
for any fraction less than 5 <i>l.</i> or	
over and above 5 <i>l.</i> or a multiple	£ s. d.
of 5 <i>l.</i> of the annuity	- 0 0 6

"Superannuation annuity" means a deferred life annuity granted or secured by contract to any person in consideration of annual premiums payable until he should attain any specified age, and so as to commence on his attaining that age.

9. No stamp duty shall be chargeable upon the following instruments; (that is to say,)

Draft or order drawn upon any banker in the United Kingdom by an officer of a public department of the State for the payment of money out of a public account. Receipt given by an officer of a public department of the State for money paid by way of imprest or advance, or in adjustment of an account, where he derives no personal benefit therefrom.

10. No stamp duty shall be deemed to have been or to be chargeable upon an agreement entered into between a landlord and tenant pursuant to subsection six of section eight or subsection two of section twenty of the Land Law (Ireland) Act, 1881.

11. (1.) A banking company to which the provisions of the Companies Acts, 1862 to 1880, are applicable, having duly forwarded to the registrar of joint stock companies a list and summary as required by the second part of the Companies Act, 1862, and having added thereto a statement of the names of the several places where it carries on business, shall not, after the passing of this Act, be bound to furnish to the Commissioners of Inland Revenue any returns under the provisions of any of the enactments specified in the First Schedule to this Act.

(2.) From and after the passing of this Act the expressions "bank" and "bankers" in the Bankers Books Evidence Act, 1879, shall include any company carrying on the business of bankers to which the provisions of the

Companies Acts, 1862 to 1880, are applicable, and having duly furnished to the registrar of joint stock companies a list and summary with the addition specified by this Act, and the fact of such list and summary having been duly furnished may be proved in any legal proceedings by the certificate of the registrar or any assistant registrar for the time being of joint stock companies.

12. Where it shall be proved to the satisfaction of the Treasury that any officer of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England or of the Probate and Matrimonial Division of the High Court of Justice in Ireland, or any commissary clerk or sheriff clerk in Scotland, has suffered any loss in consequence of the reduction by virtue of section thirty-three or section thirty-four of the Customs and Inland Revenue Act, 1881, of the amount of fees payable to him in the cases mentioned in such sections respectively, it shall be lawful for the Treasury to award to him out of moneys provided by Parliament such compensation, whether by way of an annual sum or gratuity, as they may think reasonable.

13. (1.) On and after the first day of January one thousand eight hundred and eighty-three any stamp duties of an amount not exceeding two shillings and sixpence which may legally be denoted by adhesive stamps not appropriated by any word or words on the face of them to any particular description of instrument, and any postage duties to the like amount may be denoted by the same adhesive stamps.

(2.) With a view to exhaust any adhesive postage stamps denoting an amount not exceeding two shillings and sixpence which may have been unissued or unused, such stamps to a proper amount may be used to denote any stamp duties of an amount not exceeding two shillings and sixpence, which may legally be denoted by adhesive stamps not appropriated by any word or words on the face of them to any particular description of instrument.

14. (1.) Where two or more adhesive stamps are used to denote a stamp duty upon an instrument, such instrument is not to be deemed duly stamped unless the person upon whom the duty of cancellation is by law imposed cancels each or every stamp by writing on or across the same his name or initials or the name or initials of his firm, together with the true date of his so writing, so that both or all and every of the stamps may be effectually cancelled and rendered incapable of being

used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamps appearing on the instrument were affixed thereto at the proper time.

(2.) If any person contravenes this section he shall incur the penalty imposed by section twenty-four of the Stamp Act, 1870.

15. Section twenty-five of the Stamp Act, 1870, shall be read as if the word "instrument" therein contained embraced a letter or cover within section twenty-three of the Post Office Duties Act, 1840, and any postal packet and the cover thereof which by the Post Office Act, 1875, is to be deemed a letter or cover within the same section, and as if the word "duty" therein contained embraced any postage duty as well as any stamp duty upon an instrument.

This section shall not exempt any person from any proceeding by indictment or otherwise for any offence which is punishable under the Post Office Acts as defined by the Post Office (Offences) Act, 1837, or otherwise by law, provided that no person shall be liable to be punished more than once for the same offence.

16. From and after the passing of this Act the Public Offices Fees Act, 1879, shall, notwithstanding anything to the contrary therein contained, apply and be deemed to have been applicable as from the first day of April one thousand eight hundred and eighty-two, to the stamp duties granted to Her Majesty, her heirs and successors, by an Act passed in the session holden in the sixteenth and seventeenth years of the reign of Her Majesty, intituled "An Act to substitute stamp duties for fees "on passing letters patent for inventions, "and to provide for the purchase for the "public use of certain indexes of specifications," and also to the stamp duty of five pounds on the "certificate of registration of a "design" granted to Her Majesty, her heirs and successors, by the Stamp Act, 1870, and the said duties shall be deemed to be, and to have been as from the said first day of April, fees payable in a public office and not stamp duties.

17. Whereas by the Canadian Stock Stamp Act, 1874, provision was made for the government of Canada paying capital sums, calculated at the rate therein mentioned, as composition for stamp duty chargeable on transfers of any stock of the government of Canada inscribed in books kept in the United Kingdom:

And whereas after the passing of the above Act the government of Canada issued to the public, with the option of inscription at any

time in books kept in the United Kingdom, the loans mentioned in the Second Schedule to this Act; and holders of the said loans before the passing of the Inland Revenue Act, 1880, had exercised that option to the extent in the said Schedule mentioned, and the government of Canada had paid composition for the stamp duty accordingly:

And whereas by section fifty-four of the Inland Revenue Act, 1880, the amount of the composition for stamp duty chargeable on transfers of stock of the government of Canada and other stock was increased, subject to a proviso that such increased composition should not apply for twelve months in the case of the holders of debentures of the government of a colony who had an option to exchange such debentures within twelve months for colonial stock, to which the Colonial Stock Act, 1877, applied:

And whereas, having regard to the special circumstances connected with the issue of the stock mentioned in the said Schedule, it is expedient to make for the holders of that stock a similar provision to that made by the above-mentioned proviso in the case of the holders of colonial stock:

Be it therefore enacted as follows:

Where at any time since the passing of the Inland Revenue Act, 1880, whether before or after the passing of this Act, but before the first day of April, one thousand eight hundred and eighty-six, any part of the loans of the government of Canada mentioned in the Second Schedule to this Act, has been inscribed as stock in books kept in the United Kingdom, the government of Canada may pay to the Commissioners of Inland Revenue, by way of composition for the stamp duty chargeable on transfers of such stock, a sum calculated at the rate mentioned in the Canadian Stock Stamp Act, 1874, instead of the rate mentioned in the Inland Revenue Act, 1880.

PART III.

NATIONAL DEBT AND MISCELLANEOUS.

18. Whereas the full amounts of dividends on the national debt payable at the Bank of England have from time to time been issued from the Exchequer to the Governor and Company of the said bank.

And whereas fractions of a penny have never been paid by the Governor and Company of the Bank of England on account of the dividends on the national debt, and the fractions so unpaid have accumulated in the hands of the governor and company of the Bank of England, and such accumulations amount, as shown by the account in the Third Schedule

to this Act, to upwards of one hundred and forty thousand pounds.

And whereas the sums issued out of the Exchequer to the governor and company of the Bank of England for payment of the dividends exceed, as shown in the said account, the sums paid for dividends, and out of the sums so issued a net sum of upwards of seven hundred thousand pounds, as shown by the said account, has been repaid to the Exchequer in pursuance of the enactments referred to in the said Schedule and was on the thirty-first March one thousand eight hundred and eighty-two outstanding in the books of the Bank of England.

And whereas it is expedient to make such provision as herein-after appearing, respecting the said accumulations of fractions of a penny. Be it therefore enacted as follows:—

The governor and company of the Bank of England shall from time to time, when required by the Treasury, certify to the Treasury the amount in their hands arising from fractions of a penny not paid on account of dividends on the national debt, and the Treasury may by warrant direct the said governor and company to repay the same to the Exchequer: Provided that so long as there is an account outstanding of money repaid into the Exchequer, as aforesaid, out of the sums issued for the payment of dividends, the same instead of being repaid shall be written off from the said account, and also from the account of the sums issued from the Exchequer for the payment of the said dividends, and such amount shall be written off as if it had never been issued from the Exchequer.

19. After such date as the Treasury may appoint the dividends payable in respect of the two pounds ten shillings per centum annuities mentioned in the first schedule to the National Debt Act, 1870, shall be paid quarterly, on the fifth day of January, the fifth day of April, the fifth day of July, and the fifth day of October in every year, and the said Act shall be construed accordingly; and references therein to a half year's dividend shall be construed to refer as regards the two pounds ten shillings per centum annuities to a quarter's dividend.

Regulations may be made under section thirty-nine of the said Act for carrying into effect such quarterly payments in the case of stock certificates, and for the return of old coupons and the issue of new coupons for that purpose.

20. Whereas under the Acts mentioned in the Fourth Schedule to this Act (in this section referred to as the Fortification Acts) divers

sums amounting in the whole to seven million four hundred and sixty thousand pounds were authorised to be borrowed by the Treasury by the creation of terminable annuities, and to be applied under the direction of one of Her Majesty's Principal Secretaries of State towards defraying the expenses of constructing the fortifications mentioned in the Fortification Acts :

And whereas of the above sums the sum of seven million four hundred and twenty-five thousand pounds has been actually raised in pursuance of the Fortification Acts by means of loans from the National Debt Commissioners made on the security of terminable annuities created under the said Acts, and the balance of thirty-five thousand pounds has not been raised :

And whereas out of the sums raised by such loans a balance of four thousand and eighty pounds one shilling and tenpence is unexpended :

And whereas it is expedient to provide for the disposal of the said unexpended balance and to extinguish the said power of raising money and creating terminable annuities : Be it therefore enacted as follows :

Such portion of the amount raised in pursuance of the Fortification Acts as at the passing of this Act has not been expended shall at such time as the Treasury may direct be paid to the National Debt Commissioners in repayment of an equivalent part of the loans made by them under the said Acts ; and so much of the annui-

ties created under the Fortification Acts and standing in the names of those Commissioners as the Controller General or Assistant Controller and the Actuary of the National Debt Office may certify under their hands to be equivalent to the amount of such repayment shall be cancelled in such manner as the Treasury may direct.

All power of raising any money under the Fortification Acts shall cease and the Fortification Acts shall be repealed ;

Provided that—

(1.) All annuities created in pursuance of the said Acts shall, save as provided by this section, continue to be charged on the Consolidated Fund and paid as if the said Acts had not been repealed ; and

(2.) All land vested in one of Her Majesty's Principal Secretaries of State in pursuance of the said Acts shall continue to be vested in such Secretary of State on behalf of Her Majesty.

21. Whereas by divers Acts and lastly by the Friendly Societies Act, 1875, the societies in those Acts and this Act referred to as friendly societies are authorised to invest the moneys received from members on account of assurances with the National Debt Commissioners, and to pay such moneys to those Commissioners in sums of not less than fifty pounds, and are entitled to receive receipts for such moneys bearing interest at the following rates ; that is to say,

For money invested by any society legally established before the 28th day of July 1828, which invested money with the Commissioners before 23rd July 1855.	On account of any assurance made before the 15th day of August 1850.	Threepence per centum per diem.
	On account of any assurance effected after that day.	Twopence per centum per diem.
For money invested by any society legally established between the 28th day of July 1828, and the 15th day of August 1850, which invested any money with the Commissioners before 23rd July 1855.	On account of any assurance made before the 15th day of August 1850.	Twopence halfpenny per centum per diem.
	On account of any assurance effected after that day.	Twopence per centum per diem.
For money invested by any society legally established since the 15th day of August 1850.	On account of any assurance whenever effected.	Twopence per centum per diem.

And whereas the Commissioners have from time to time invested the moneys so paid to them in parliamentary securities to an account entitled the fund for Friendly Societies, but such securities have produced less interest than that to which the societies were entitled as above-mentioned, and thereby there has been, as appears from the returns annually laid before Parliament, a gradually increasing deficiency in the value of the securities held by the National Debt Commissioners on the said account to meet the sums due from those Commissioners to the Friendly Societies:

And whereas the Customs, Inland Revenue, and Savings Banks Act, 1877, provided that the National Debt Commissioners shall annually make out an account with respect to the year ending on the twentieth day of November, showing on one side the interest accrued from the said securities, and on the other side the interest paid and credited to Friendly Societies; and further, after reciting that it was intended that where the interest accrued from such securities in any year was insufficient to meet the interest required to be paid and credited, such deficiency should be paid out of moneys provided by Parliament, the said Act provided for paying into the exchequer any surplus of interest received over and above the interest paid and credited:

And whereas it is expedient to provide for the payment out of Consolidated Fund of all capital sums, as well as the interest due from the National Debt Commissioners to Friendly Societies, when the securities held on account of Friendly Societies by the said Commissioners to meet the same have been exhausted:

Be it therefore enacted, as follows:

(1.) Whenever it appears to the Treasury from time to time that by reason of the securities held by the National Debt Commissioners on account of Friendly Societies being exhausted, the moneys in the hands of the National Debt Commissioners standing to the credit of the Fund for Friendly Societies will be insufficient to meet the sums which are likely to become due from the National Debt Commissioners to Friendly Societies, the Treasury shall provide money to meet the deficiency out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, in such manner as they may think expedient.

(2.) The Treasury may in any financial year borrow all or any part of the moneys issued in that financial year out of the Consolidated Fund, or the growing produce thereof, in pursuance of this Act, by means of a terminable annuity for such period not exceeding eighteen years from the thirty-first day of December next after the passing of this Act as the Treasury think expedient.

(3.) An annuity created in pursuance of this section shall be created by warrant of the Treasury to the Governor and Company of the Bank of England directing them to inscribe in their books the amount of such annuity in the names directed by the warrant.

(4.) Every such annuity shall be charged on the Consolidated Fund, and shall be added to and paid out of the permanent annual charge for the National Debt, and the permanent annual charge for the National Debt shall, during the period for which the said annuity is created, be increased by the amount of the annuity.

(5.) All money for the time being in the hands of the National Debt Commissioners on account of Friendly Societies shall be invested by them in the like manner as if they were moneys in their hands on account of savings banks, and all enactments relating to the investment of such last-mentioned moneys shall apply accordingly.

22. Whereas under the Prison (Officers Superannuation) Act, 1878, the Treasury are authorised in certain cases to pay to a local authority a capital sum as commutation of the share of an annuity payable to an officer of a prison by the Treasury, and are also authorised to accept from a local authority a capital sum as commutation of the share of any such annuity payable by the local authority, and it is provided that any sum so paid by the Treasury shall be paid out of moneys provided by Parliament, and that any sum so paid to the Treasury shall be paid into the Exchequer, and it is expedient to make such other provision respecting the said capital sums as herein-after mentioned; be it therefore enacted as follows:

(1.) The National Debt Commissioners may, on the request of the Treasury, advance out of any funds for the time being in their hands on account of savings banks any capital sum to be paid by the Treasury in pursuance of the Prison (Officers Superannuation) Act, 1878.

(2.) Any amount advanced by the National Debt Commissioners in pursuance of this section shall be repaid to them by means of a terminable annuity for a period of ten years, to be calculated with interest at the rate of not less than three and a half per cent. per annum, and such annuity shall be paid out of moneys provided by Parliament.

(3.) If at any time it appears desirable to the Treasury and to the said Commissioners that a portion of any such advance should be repaid immediately out of the Consolidated Fund, the Treasury may charge on and issue to the said Commissioners out of the Consoli-

dated Fund or the growing produce thereof the said portion, and the annuity shall be reduced by an amount equivalent to the portion of the advance so repaid.

(4.) All capital sums paid to the Treasury by a local authority in pursuance of the Prison (Officers Superannuation) Act, 1878, shall be paid to the National Debt Commissioners and shall be applied by them in like manner as is directed with respect to the old sinking fund by section five of the Sinking Fund Act, 1875.

(5.) The amount of any annuity payable to the National Debt Commissioners in pursuance of this section, and the portion of any advance which is to be repaid immediately out of the Consolidated Fund to the National Debt Commissioners, and the amount by which any annuity is to be reduced in consequence of such repayment shall be certified under the hands of the Controller General or Assistant Controller and the Actuary of the National Debt Office.

23. Whereas by the Consolidated Fund (Permanent Charges Redemption) Act, 1873, the Treasury are authorised as regards certain annuities as defined by that Act which are charged on the Consolidated Fund or moneys provided by Parliament to contract for their redemption by payment of a capital sum out of moneys provided by Parliament not exceeding the sum therein mentioned; and in the case of any annuity payable to an ecclesiastical corporation, the contract for such redemption is made subject to the consent of the Ecclesiastical Commissioners for England, and the money for such redemption is to be paid to those Commissioners to be applied under their direction for the benefit of the person entitled thereto.

And whereas any such contract may provide for the said redemption by the transfer of Government securities as therein defined instead of by the payment of a sum of money.

And whereas it is expedient to extend the powers of the said Act as regards the redemption of annuities payable to ecclesiastical corporations in England: Be it therefore enacted as follows:—

(1.) The Treasury may, in pursuance of the Consolidated Fund (Permanent Charges Redemption) Act, 1873, contract from time to time with the Ecclesiastical Commissioners for England for the redemption of all or any of the annuities redeemable under that Act which are payable to ecclesiastical corporations in England; and on payment of the money or transfer of the securities to the Ecclesiastical Commissioners in pursuance of any such con-

tract, the annuities to which the contract refers shall cease to be charged on and payable out of the Consolidated Fund or moneys provided by Parliament, and shall be payable by the Ecclesiastical Commissioners for England, so however that any proportionate part of any such annuity which may be due up to the time of such payment or transfer shall be paid by the Treasury to the person entitled thereto.

(2.) The Treasury may from time to time borrow from the National Debt Commissioners, and those Commissioners may lend out of the funds in their hands on account of Trustee and Post Office Savings Banks, such capital sum or such Government securities as may be necessary for the purpose of carrying into effect any contract with the Ecclesiastical Commissioners under this section.

(3.) For the purpose of repaying any such loan the Treasury may by warrant under their hands create, and direct the Governor and Company of the Bank of England to inscribe in their books for the National Debt Commissioners, a terminable annuity for a period of ten years from the date of the loan, to be calculated with interest at the rate of not less than three and a half per cent. per annum.

(4.) Sections four, five, six, and seven of the Savings Bank Investment Act, 1869, shall apply to every such terminable annuity in like manner as they apply to the terminable annuities created in pursuance of that Act for the National Debt Commissioners.

24. Whereas doubts have arisen as to whether the right of Her Majesty to certain escheats, forfeitures, personal estate of intestates, fines, and recognisances, herein-after mentioned, is vested in Her Majesty in right of Her Crown or in right of Her Duchy of Lancaster, and it is expedient to remove such doubts.

Be it therefore enacted as follows:—

Such rights of Her Majesty as are herein-after mentioned shall be deemed to have been vested in Her Majesty in right of Her Crown as from and after the first day of January, one thousand eight hundred and eighty-one.

Forthwith after the passing of this Act the Treasury shall cause a sum of fifteen thousand pounds to be paid out of the Consolidated Fund or out of the growing produce thereof to the Receiver General of the Revenues of the Duchy of Lancaster, or his deputy or deputies, and such sum shall be applied in like manner as sums arising from the sale of any part of the possessions of the Duchy of Lancaster are

applied under the Duchy of Lancaster Lands Act, 1855, and the provisions of that Act shall apply in like manner as if such sum were purchase money for land sold under the authority of that Act.

The rights of Her Majesty to which this section applies are:—

- (a.) Any right vested in Her Majesty to any escheat or forfeiture of land lying within any liberty of the Duchy of Lancaster which is not situated in the county of Lancaster, not being an escheat or forfeiture of land holden of any manor vested in Her Majesty in right of Her Duchy of Lancaster;
- (b.) Any right vested in Her Majesty to the personal estate of any person dying intestate and without next of kin who is domiciled within any such liberty;
- (c.) Any right vested in Her Majesty to any sum arising from a fine imposed on or estreated recognisance acknowledged by any person residing within any such liberty.

25. So much of the Act of the session of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-

two, intituled "An Act to facilitate the sale and transfer of land in Ireland," as limits certain fees therein mentioned to a sum not exceeding three halfpence for every seventy-two words is hereby repealed.

Section eighty-four of the Supreme Court of Judicature (Ireland) Act, 1877, shall apply to all fees and percentages to be taken in any proceedings under the above-mentioned Act of the twenty-first and twenty-second years of the reign of Her present Majesty, and any Act amending the same, with this qualification that the Land Judges or one of them shall be substituted in the said section for the Presidents of the divisions of the High Court, or one of them.

26. In this Act, unless the context otherwise require:

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

The expression "National Debt Commissioners" means the Commissioners for the reduction of the National Debt.

The expression "financial year" means the twelve months ending on the thirty-first day of March.

FIRST SCHEDULE.

BANKING ACTS.

6 Geo. 4. c. 42.
7 Geo. 4. c. 46.
7 Geo. 4. c. 67.

7 & 8 Vict. c. 32. s. 21.
8 & 9 Vict. c. 37. s. 22.
8 & 9 Vict. c. 38. s. 13.

SECOND SCHEDULE.

DOMINION OF CANADA LOANS.

The following amount of 4 per cent. loans were issued to the public in the following years:

	£
In 1874 - - - - -	4,000,000
In 1875 - - - - -	1,000,000
In 1876 - - - - -	2,500,000
In 1878-9 - - - - -	4,500,000
	£12,000,000

Of the above there were inscribed in books kept in the United Kingdom up to the first day of May 1882:

	£
Of the loan of 1874 - - - - -	1,831,200
" " 1875 - - - - -	500,000
" " 1876 - - - - -	1,088,000
" " 1878-9 - - - - -	2,279,700
	5,698,900

Leaving in the hands of the public with option of inscription - - - - -	£6,301,100
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THIRD SCHEDULE.

ACCOUNT AS TO DIVIDENDS ON NATIONAL DEBT.

I.

ACCOUNT OF FRACTIONS of a PENNY accumulated in the Hands of the GOVERNOR and COMPANY of the BANK of ENGLAND to 31st March 1882.

	£	s.	d.
Consolidated £3 per cent. Annuities - - -	80,997	1	9
Reduced £3 per cent. Annuities - - -	15,068	5	11
New £3 per cent. Annuities - - -	4,289	11	7
£2 10s. per cent. Annuities, 1854 - - -	37	9	4
New £3 10s. per cent. Annuities, 1854 - - -	6	5	0
Annuities for 30 years, ending 1885 - - -	7	15	11
Annuities for terms of years - - -	36	2	11
Red Sea and India Telegraph Annuity - - -	0	10	8
New £5 per cent. Annuities, 1830 - - -	13	4	7
£5 per cent. Annuities (Consolidated) - - -	6,557	7	0
£4 per cent. Annuities, Consolidated, 1780 - - -	1,359	9	0
£3 per cent. Annuities, 1726 - - -	1,429	9	7
£3 10s. per cent. Annuities, 1818 - - -	10,595	19	8
£4 per cent. Annuities, 1826 - - -	49	0	2
£3 10s. per cent. Reduced Annuities, 1824 - - -	797	15	4
New £4 per cent. Annuities, 1822 - - -	2,231	13	4
New £3 10s. per cent. Annuities, 1830 - - -	3,872	12	4
£3 5s. per cent. Annuities, 1844 - - -	3,204	5	11
Consolidated Long Annuities, 1780 - - -	127	19	0
Sundry balances of old Annuities - - -	12,590	12	2
	<u>£143,272</u>	<u>11</u>	<u>2</u>

II.

Excess, on 31st March 1882, of issues out of the Exchequer to the Governor and Company of the Bank of England for payment of dividends beyond the sums paid - - -	849,372	17	1
Amount repaid by the Bank of England to the Exchequer in 1791 under 31 Geo. 3. c. 33., and in 1808 under 41 Geo. 3. c. 4., being amount appropriated out of surplus balances of dividend accounts - - -	£ 876,739	s. 0	d. 9
Less:—			
Issues to the Bank in 1877–8, 1879–80, and 1880–1, under 24 Vict. c. 3. - - -	120,000	0	0
Net repayment by the Bank - - -	756,739	0	9
Cash balance in the hands of the Bank of England on 31st March 1882 available for payment of dividends - - -	£92,633	16	4

FOURTH SCHEDULE.

FORTIFICATION ACTS.

Session and Chapter.	Title.
23 & 24 Vict. c. 109. -	An Act for defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
25 & 26 Vict. c. 78. -	An Act for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
26 & 27 Vict. c. 80. -	An Act for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
27 & 28 Vict. c. 109. -	An Act for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
28 & 29 Vict. c. 61. -	An Act for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
30 & 31 Vict. c. 24. -	An Act to amend an Act of the twenty-eighth and twenty-ninth years of Her present Majesty, chapter sixty-one, for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland, and of creating a central arsenal.
30 & 31 Vict. c. 145. -	An Act for providing a further sum towards defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards and the ports of Dover and Portland.
32 & 33 Vict. c. 76. -	An Act for providing the final sum necessary to be raised by loan towards carrying on the works now in course of construction for the protection of the Royal Arsenals and Dockyards and the harbours of Dover and Portland, and for authorising the abandonment of that portion of the works already sanctioned by Parliament which has not been yet commenced.

CHAP. 73.

Ancient Monuments Protection Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Power to appoint Commissioners of Works guardians of ancient monuments.*
3. *Power of Commissioners to purchase ancient monuments.*
4. *Power to give, devise, or bequeath ancient monuments to Commissioners.*
5. *Inspectors of ancient monuments.*
6. *Penalty for injury to ancient monuments.*

7. *Recovery of penalties.*
8. *Description of Commissioners of Works, and law as to disposition in their favour.*
9. *Description of owners for purposes of Act.*
10. *Additions to Schedule by Order in Council.*
11. *Definitions.*

SCHEDULE.

An Act for the better protection of Ancient Monuments.

(18th August 1882.)

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Ancient Monuments Protection Act, 1882.

2. The owner of any ancient monument to which this Act applies may, by deed under his hand, constitute the Commissioners of Works in this Act mentioned the guardians of such monument.

Where the Commissioners of Works have been constituted guardians of a monument, they shall thenceforth, until they shall receive notice in writing to the contrary from any succeeding owner not bound by such deed as aforesaid, maintain such monument, and shall, for the purpose of such maintenance, at all reasonable times by themselves and their workmen have access to such monument for the purpose of inspecting it, and of bringing such materials and doing such acts and things as may be required for the maintenance thereof.

The owner of an ancient monument of which the Commissioners of Works are guardians shall, save as in this Act expressly provided, have the same estate, right, title, and interest, in and to such monument, in all respects, as if the Commissioners had not been constituted guardians thereof.

The expressions "maintain" and "maintenance" include the fencing, repairing, cleansing, covering in, or doing any other act or thing which may be required for the purpose of repairing any monument or protecting the same from decay or injury. The cost of maintenance shall, subject to the approval of Her Majesty's Treasury, be defrayed from moneys to be provided by Parliament.

3. The Commissioners of Works, with the consent of the Treasury, may purchase out of any moneys which may for that purpose be from time to time provided by Parliament any

ancient monument to which this Act applies, and with a view to such purchase the Lands Clauses Consolidation Acts shall be incorporated with this Act, with the exception of the provisions which relate to the purchase and taking of lands otherwise than by agreement. In construing the said Lands Clauses Consolidation Acts for the purposes of this Act this Act shall be deemed to be the special Act, and the Commissioners of Works shall be deemed to be the promoters of the undertaking.

4. Any person may by deed or will give, devise, or bequeath to the Commissioners of Works all such estate and interest in any ancient monument to which this Act applies as he may be seised or possessed of, and it shall be lawful for the Commissioners of Works to accept such gift, devise, or bequest if they think it expedient so to do.

5. The Commissioners of Her Majesty's Treasury shall appoint one or more inspectors of ancient monuments, whose duty it shall be to report to the Commissioners of Works on the condition of such monuments, and on the best mode of preserving the same, and there may be awarded to the inspectors so appointed such remuneration and allowance for expenses, out of moneys provided by Parliament, as may be determined by the Commissioners of Her Majesty's Treasury.

6. If any person injures or defaces any ancient monument to which this Act applies, such person shall, on summary conviction, be liable, at the discretion of the court by which he is tried, to one of the following penalties; (that is to say,)

- (1.) To forfeit any sum not exceeding five pounds, and in addition thereto to pay such sum as the court may think just for the purpose of repairing any damage which has been caused by the offender; or,
- (2.) To be imprisoned with or without hard labour for any term not exceeding one month.

The owner of an ancient monument shall not be punishable under this section in respect of any act which he may do to such monument, except in cases where the Commissioners

of Works have been constituted guardians of such monument, in which case the owner shall be deemed to have relinquished his rights of ownership so far as relates to any injury or defacement of such monument, and may be dealt with as if he were not the owner.

7. Offences and penalties under this Act shall be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

The expression "Summary Jurisdiction Acts"—

- (1.) As regards England, has the same meaning as in the Summary Jurisdiction Act, 1879; and
- (2.) As regards Scotland, means the Summary Jurisdiction (Scotland) Acts, 1864 and 1881; and
- (3.) As regards Ireland, means, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district or of the police of such district; and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act amending the same.

In England any person aggrieved by any decision of the court acting under the Summary Jurisdiction Acts may appeal to a court of general or quarter sessions.

8. The expression "The Commissioners of Works" means as respects Great Britain the Commissioners of Her Majesty's Works and Public Buildings, and as respects Ireland the Commissioners of Public Works in Ireland.

Each of the said bodies, that is to say, the Commissioners of Her Majesty's Works and Public Buildings as respects Great Britain and the Commissioners of Public Works as respects Ireland, shall be incorporated by their said names respectively, and shall have perpetual succession and a common seal, and may purchase or acquire by gift, will, or otherwise, and hold without licence in mortmain, any land or estate or interest in land for the purposes of this Act; and any conveyance, appointment, devise, or bequest of land, or any estate, or interest in land under this Act to either of the said bodies, shall not be deemed to be a conveyance, appointment, devise, or bequest to a charitable use within the meaning of the Acts relating to charitable uses. In the case of an ancient monument in Scotland, a duplicate of any report made by any inspector under this Act to the Commissioners of Works shall be forwarded to the Board of Trustees for Manufactures in Scotland, and it shall be the duty of the Commissioners of Works, in relation to any such monument, to take into consideration any

representations which may be made to them by the said Board of Trustees for Manufactures.

9. The following persons shall be deemed to be "owners" of ancient monuments for the purposes of this Act; that is to say,

- (1.) Any person entitled for his own benefit, at law or in equity, for an estate in fee, to the possession or receipt of the rents and profits of any freehold or copyhold land, being the site of an ancient monument, whether such land is or not subject to incumbrances:
- (2.) Any person absolutely entitled in possession, at law or in equity, for his own benefit, to a beneficial lease of land, being the site of an ancient monument, of which not less than forty-five years are unexpired, whether such land is or not subject to incumbrances; but no lease shall be deemed to be a beneficial lease, within the meaning of this Act, if the rent reserved thereon exceeds one third part of the full annual value of the land demised by such lease:
- (3.) Any person entitled under any existing or future settlement, at law or in equity, for his own benefit, and for the term of his own life, or the life of any other person, to the possession or receipt of the rents and profits of land of any tenure, being the site of an ancient monument, whether subject or not to incumbrances in which the estate for the time being subject to the trusts of the settlement is an estate for lives or years renewable for ever, or is an estate renewable for a term of not less than sixty years, or is an estate for a term of years of which not less than sixty are unexpired, or is a greater estate than any of the foregoing estates:
- (4.) Any body corporate, any corporation sole, any trustees for charities, and any commissioners or trustees for ecclesiastical, collegiate, or other public purposes, entitled at law or in equity, and whether subject or not to incumbrances, in the case of freehold or copyhold land, being the site of an ancient monument, in fee, and in the case of leasehold land, being the site of an ancient monument, to a lease for an unexpired term of not less than sixty years.

Where any owner as herein-before defined is a minor, or of unsound mind, or a married woman, the guardian, committee, or husband, as the case may be, of such owner, shall be the owner within the meaning of this Act; subject to this proviso, that a married woman entitled for her separate use, and not restrained from anticipation, shall for the purposes of

this Act be treated as if she were not married. Every person deriving title to any ancient monument from, through, or under any owner who has constituted the Commissioners of Works the guardians of such monument shall be bound by the deed executed by such owner for that purpose; and where the owner of any land, being the site of an ancient monument, is a tenant for life or in tail, or heir of entail in possession in Scotland, having a power of sale over such land, either under the terms of a will or settlement, or under an Act of Parliament, any deed executed by such owner in respect of the land, being such site as aforesaid, of which he is so tenant for life or in tail, shall bind every succeeding owner of any estate or interest in the land.

10. Her Majesty may, from time to time, by Order in Council, declare that any monument of a like character to the monuments described in the Schedule hereto, shall be deemed to be an ancient monument to which this Act applies, and thereupon this Act shall apply to such monument in the same manner in all respects as if it had been described in the Schedule hereto.

An Order in Council under this section shall not come into force until it has lain for forty days before both Houses of Parliament during the Session of Parliament.

11. The following expressions shall, except

in so far as is inconsistent with the tenour of this Act, have the meaning herein-after assigned to them; (that is to say,)

The word "settlement" includes any Act of Parliament, will, deed, or other assurance whereby particular estates or particular interests in land are created, with remainders or interests expectant thereon:

The expression "Lands Clauses Consolidation Acts" means, as respects England, the Lands Clauses Consolidation Act, 1845, and any Acts amending the same; and as respects Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845, and any Act amending the same; and as respects Ireland, the Lands Clauses Consolidation Act, 1845, and the Acts amending the same, so far as respects Ireland:

The expression "ancient monuments to which this Act applies" means the monuments described in the Schedule hereto, and any other monuments of a like character of which the Commissioners of Works at the request of the owners thereof may consent to become guardians; and "ancient monument" includes the site of such monument and such portion of land adjoining the same as may be required to fence, cover in, or otherwise preserve from injury the monument standing on such site, also the means of access to such monument.



The SCHEDULE.

LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES.

ENGLAND AND WALES.

—	County.	Parish.
<i>The tumulus and dolmen, Plas Newydd, Anglesea</i>	<i>Anglesea</i> - -	<i>Llandudwen.</i>
<i>The tumulus known as Wayland Smith's Forge</i>	<i>Berkshire</i> - -	<i>Ashbury.</i>
<i>Uffington Castle - - - -</i>	" - -	<i>Uffington.</i>
<i>The stone circle known as Long Meg and her Daughters, near Penrith.</i>	<i>Cumberland</i> - -	<i>Addingham.</i>
<i>The stone circle on Castle Rigg, near Keswick -</i>	" - -	<i>Crosthwaite.</i>
<i>The stone circles on Burn Moor - - - -</i>	" - -	<i>St. Bees.</i>
<i>The stone circle known as The Nine Ladies, Stanton Moor.</i>	<i>Derbyshire</i> - -	<i>Bakewell.</i>
<i>The tumulus known as Arborlow - - - -</i>	" - -	"
<i>Hob Hurst's House and Hut, Bastow Moor -</i>	" - -	"

	County.	Parish.
<i>Minning Low</i> - - - - -	<i>Derbyshire</i> - -	<i>Brassington.</i>
<i>Arthur's Quoit, Gower</i> - - - - -	<i>Glamorganshire</i> - -	<i>Llanridian.</i>
<i>The tumulus at Uley</i> - - - - -	<i>Gloucestershire</i> - -	<i>Uley.</i>
<i>Kits Coty House</i> - - - - -	<i>Kent</i> - -	<i>Aylesford.</i>
<i>Danes Camp</i> - - - - -	<i>Northamptonshire</i> - -	<i>Hardingstone.</i>
<i>Castle Dykes</i> - - - - -	" - -	<i>Farthingston.</i>
<i>The Rollrich Stones</i> - - - - -	<i>Oxfordshire</i> - -	<i>Little Rollright.</i>
<i>The Pentre Evan Cromlech</i> - - - - -	<i>Pembrokeshire</i> - -	<i>Nevern.</i>
<i>The ancient stones at Stanton Drew</i> - - - - -	<i>Somersetshire</i> - -	<i>Stanton Drew.</i>
<i>The chambered tumulus at Stoney Littleton, Wellow.</i>	" - -	<i>Wellow.</i>
<i>Cadbury Castle</i> - - - - -	" - -	<i>South Cadbury.</i>
<i>Mayborough, near Penrith</i> - - - - -	<i>Westmoreland</i> - -	<i>Barton.</i>
<i>Arthur's Round Table, Penrith</i> - - - - -	" - -	"
<i>The group of stones known as Stonehenge</i> - - - - -	<i>Wiltshire</i> - -	<i>Amesbury.</i>
<i>Old Sarum</i> - - - - -	" - -	"
<i>The vallum at Abury, the Sarcen stones within the same, those along the Kennet Road, and the group between Abury and Beckhampton.</i>	" - -	<i>Abury.</i>
<i>The long barrow at West Kennet, near Marlborough.</i>	" - -	<i>West Kennet.</i>
<i>Silbury Hill</i> - - - - -	" - -	<i>Abury.</i>
<i>The dolmen (Devil's Den), near Marlborough</i> - - - - -	" - -	<i>Fyfield.</i>
<i>Barbury Castle</i> - - - - -	" - -	<i>Ogbourne, St. Andrews, and Swindon.</i>

LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES.

SCOTLAND.

	County.	Parish.
<i>The Bass of Inverury</i> - - - - -	<i>Aberdeenshire</i> - -	<i>Inverurie.</i>
<i>The vitrified fort on the Hill of Noath</i> - - - - -	" - -	<i>Rhynie.</i>
<i>The pillar and stone at Newton-in-the Garioch</i> - - - - -	" - -	<i>Oulsaalmond.</i>
<i>The circular walled structures called "Edin's Hall," on Cockburn Law.</i>	<i>Berwickshire</i> - -	<i>Dunse.</i>
<i>The British walled settlement enclosing huts at Harefaulds in Lauderdale.</i>	" - -	<i>Lauder.</i>
<i>The Dun of Dornadilla</i> - - - - -	<i>Sutherlandshire</i> - -	<i>Durness.</i>
<i>The sculptured stone called Suenos Stone, near Forres.</i>	<i>Elgin</i> - -	<i>Rafford.</i>
<i>The cross slab, with inscription, in the church-yard of St. Vigean.</i>	<i>Forfarshire</i> - -	<i>St. Vigean.</i>
<i>The British forts, on the hills, called "The Black and White Oathertums."</i>	" - -	<i>Menmuir.</i>
<i>A group of remains and pillars, on a haugh at Olava on the banks of the Nairn.</i>	<i>Inverness</i> - -	<i>Oroy and Daloross.</i>
<i>The Pictish Towers at Glenelg</i> - - - - -	" - -	<i>Glenelg.</i>
<i>The Cairns, with chambers and galleries partially dilapidated.</i>	<i>Kirkcudbrightshire</i> - -	<i>Minnigaff.</i>
<i>The Catstane, an inscribed pillar</i> - - - - -	<i>Linlithgow</i> - -	<i>Kirkliston.</i>

	County.	Parish.
<i>The Ring of Brogar and other stone pillars at Stennis in Orkney, and the neighbouring pillars.</i>	Orkney - -	<i>Firth and Stennis.</i>
<i>The Chambered mound of Maeshowe - -</i>	" - -	" "
<i>The stones of Callernish - -</i>	Ross - -	<i>Uig.</i>
<i>The Burgh of Clickanim - -</i>	Shetland - -	<i>Sound.</i>
<i>The Pictish tower at Mousa in Shetland -</i>	" - -	<i>Dunrossness.</i>
<i>The inscribed slab standing on the roadside leading from Wigton to Whithorn and about a mile from Whithorn.</i>	Wigtonshire - -	<i>Whithorn.</i>
<i>Two stones, with incised crosses, on a mound in a field at Lagganairn</i>	" - -	<i>New Luce.</i>
<i>The pillars at Kirkmadrine - -</i>	" - -	<i>Stoneykirk.</i>

LIST OF ANCIENT MONUMENTS TO WHICH ACT APPLIES.

IRELAND.

	County.	Parish.	Barony.
<i>The earthen enclosure and mounds called the Navan Fort.</i>	Armagh -	Eglisk -	<i>Armagh.</i>
<i>Stone monuments and groups of sepulchral cists in Glen Maulin.</i>	Donegal -	Glencolumbkille	<i>Banagh.</i>
<i>The earthen and stone inclosure known as Grianan of Aileach.</i>	" -	Burt -	<i>West Innishowen.</i>
<i>The earthen inclosure and Cromlech called the Giant's Ring near Ballylessan.</i>	Down -	Drumbo -	<i>Upper Castlereagh.</i>
<i>The earthen fort at Downpatrick (Dunkeltair).</i>	" -	Downpatrick -	<i>Lecale.</i>
<i>Stone structure called Staigue Fort -</i>	Kerry -	Kilcrogham -	<i>Dunkerron.</i>
<i>The earthen mound at Greenmount -</i>	" -	Kilsaran -	<i>Ardee.</i>
<i>The stone monument at Ballyma -</i>	Mayo -	Kilmoremoy -	<i>Tyrasoly.</i>
<i>Cairns and stone circles at Moytura -</i>	" -	Cong -	<i>Kilmaine.</i>
<i>The tumuli, New Grange, Knowth and Dowth.</i>	Meath -	Monknewton and Dowth.	<i>Upper Slane.</i>
<i>The earthworks on the hill of Tara -</i>	" -	Tara -	<i>Skreen.</i>
<i>The earthworks at Teltown (Taltin) -</i>	" -	Teltown -	<i>Upper Kells.</i>
<i>The earthworks at Wardstown (Tlaghta) -</i>	" -	Athboy -	<i>Lane.</i>
<i>The two central tumuli on the hills called Slieve Na Calliagh.</i>	Meath -	Loughcrew -	<i>Fore.</i>
<i>The Cairn at Heapstown -</i>	Sligo -	Kilmacallan -	<i>Tirerrill.</i>
<i>Sepulchral remains at Carrowmore. The cairn called Miscawn Mave or Knocknarea.</i>	" -	Kilmacowen -	<i>Curbury.</i>
<i>The cave containing Ogham inscribed stones at Drumloghan.</i>	Waterford	Stradbally -	<i>Decies without Drum.</i>
<i>The stone monument called the Catstone and the cemetery on the hill of Usnagh.</i>	Westmeath	Killare -	<i>Rathconrath.</i>

CHAP. 74.

Post Office (Parcels) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
 2. *Remuneration to railway companies for carriage of parcels.*
 3. *Services to be rendered by railway companies.*
 4. *Calculation of gross receipts.*
 5. *Payments to Clearing Committee.*
 6. *Apportionment of amount received by committee.*
 7. *Conditions as to conveyance of parcels by railway.*
 8. *Arbitration under Act.*
 9. *Railway companies parties to arrangement and remuneration to company not party to arrangement.*
 10. *Application of law upon determination of arrangement under this Act.*
 11. *Saving of existing rights.*
 12. *Mode of acting by Postmaster-General and Clearing Committee.*
 13. *Application of Act to steam vessels.*
 14. *Application of Customs Acts to foreign parcels.*
 15. *Application of Act to Channel Islands and Isle of Man.*
 16. *Application of Post Office Acts.*
 17. *Definitions.*
- SCHEDULES.

An Act to amend the Post Office Acts
with respect to the Conveyance of
Parcels. (18th August 1882.)

WHEREAS the Postmaster-General, with the consent of the Treasury, has made an arrangement with the railway companies named in the First Schedule to this Act whereby the Postmaster-General will pay to the said railway companies and such other railway companies as become parties to the arrangement under this Act the remuneration to railway companies for services rendered by them in relation to the conveyance of parcels, and the said railway companies, through the medium of the London Railway Clearing Committee, will apportion such remuneration among the different railway companies, and such remuneration will consist of the sums herein-after mentioned :

And whereas the Treasury propose, on the representation of the Postmaster-General, to make regulations in pursuance of the Acts relating to the Post Office with respect to the posting, forwarding, conveyance and delivery of parcels, and to provide that parcels of the weights mentioned in the Second Schedule to this Act shall be carried at the rates in that schedule mentioned, and on different conditions from ordinary postal packets :

And whereas it is expedient to make the provisions herein-after appearing respecting such parcels and for carrying into effect the said arrangement :

And whereas the Bill for this Act has, so far as the same affects the railway companies named in the First Schedule to this Act, been assented to by them :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as the Post Office (Parcels) Act, 1882.

2. In the event of any regulations being made by the Treasury in pursuance of the Post Office Acts and providing for the conveyance of parcels by post on different conditions from ordinary postal packets, the following provisions shall, subject to the provisions of this Act, have effect :

(1.) The Postmaster-General shall from time to time pay to the railway companies parties to the arrangement under this Act the amount herein-after mentioned as the remuneration of all railway companies in respect of the conveyance of parcels by such companies, and the amount so paid (in this Act referred to as the railway remuneration) shall be in substitution for any other remuneration in respect of the conveyance of such parcels, and every railway company shall render in respect of such parcels the services required by this Act, and shall accept the said payment

in full satisfaction and discharge for the said services.

- (2.) The amount of the railway remuneration shall be eleven-twentieth parts of the gross receipts of the Postmaster-General from such of the said parcels as are conveyed by railway;

Provided that if at any time in pursuance of regulations of the Treasury the weights of or rates of postage for parcels differ from those mentioned in the Second Schedule to this Act, the railway companies parties to the arrangement under this Act may, by notice under the hand of the secretary to the London Railway Clearing Committee, require a revision of the amount of the railway remuneration, and the amount as determined on such revision shall be substituted for the above-mentioned eleven-twentieth parts of the gross receipts, subject nevertheless, in the event of any further change in the weights of or rates of postage for parcels, to another revision on notice requiring the same given either by the railway companies or by the Postmaster-General, and so on from time to time.

- (3.) In the case of a revision the amount of railway remuneration shall be a sum to be paid to the companies collectively in manner provided by this Act, and if such amount is not determined by agreement between the Postmaster-General and the railway companies, parties to the arrangement under this Act, the amount shall be referred to arbitration in manner provided by this Act.

- (4.) The provisions of this section (in this Act referred to as the arrangement under this Act) shall continue in force during a period of twenty-one years next after the said regulations come into operation, and thereafter until the expiration of twelve months notice to determine the same given by the Postmaster-General on the one side, or by the railway companies on the other, either before or after the expiration of the said twenty-one years.

8. During the continuance of the arrangement under this Act the railway companies shall render the following services:—

- (1.) Every railway company shall convey by any train by which passengers, goods, or parcels are conveyed all such parcels as may be tendered for conveyance by such train, whether such parcels be under the charge of a person appointed by the Postmaster-General or not, and notwithstanding that no notice has been given to the

company with respect to the conveyance of such parcels:

Provided that the conveyance of parcels by mail and express trains shall be limited so as not to affect prejudicially the convenient and punctual working of those trains.

- (2.) Every railway company shall afford all reasonable facilities for the receipt and delivery of the sacks, hampers, boxes, or other receptacles containing the parcels at any of their stations without requiring them to be booked or interposing any other delay, and shall perform the service of transferring such sacks, hampers, boxes, or other receptacles to and from the vehicles of the Postmaster-General at the outwards and inwards railway stations.
- (3.) Every railway company shall convey, free of charge, but in a manner convenient to them but not interfering with his custody of the parcels, any servant of the Postmaster-General appointed to take charge of the parcels during their conveyance by railway; but if such person during the conveyance receives any injury, and the company pay any sum for damages or costs in respect of such injury, or on account of death arising from such injury, the Postmaster-General shall pay to the company one half of such sum, but if the sum is paid by the company under agreement or by way of compromise of any claim, the Postmaster-General shall not be liable to pay one half unless his written consent has been previously given to the payment of such sum.
- (4.) If the parcels are in charge of a person appointed by the Postmaster-General every railway company shall permit such person, if he thinks fit, by himself or his assistants, to deliver and receive the parcels at any station at which the train by which the sacks, hampers, boxes, or other receptacles containing the parcels are intended to be or are conveyed is appointed to stop and during the time limited for such stoppage, but nevertheless shall, if required by such person, assist him in transferring the sacks, hampers, boxes, or other receptacles to and from the vehicles of the Postmaster-General.
- (5.) Every railway company shall, if the Postmaster-General so require, provide in every train, not being an express or mail train, a special parcels van or other separate accommodation for sorting parcels carried by such train, and the Postmaster-General shall pay to such company in respect of the said van or accommodation such amount as may be agreed on, or,

of difference, be determined by

receipts of the Postmaster-General conveyed by railway for

without any deduction of cost of stamps, or

such extra charges (the usual rate of postage)

time to time fixed by the

ions; and

include the rates of postage which

be chargeable for Government parcels, if they were sent by private persons, notwithstanding that the same may be conveyed without being stamped; and

(d.) As regards foreign parcels shall be taken to be the same amount as would have been the gross receipts of the Postmaster-General in respect of such parcels if they had been inland parcels of the same weight.

5. (1.) The Postmaster-General shall from time to time, and at least once in every three months, and, within seven weeks after the expiration of the period to which such accounts respectively relate, render to the railway companies parties to the arrangement under this Act, through the medium of the London Railway Clearing Committee, such accounts as may be reasonably necessary to show the sums due to railway companies in respect of railway remuneration under this Act, and shall keep all such accounts as are reasonably necessary for that purpose, and shall afford reasonable inspection thereof to the secretary to the London Railway Clearing Committee on behalf of the railway companies, and shall as soon as may be, and at least within one week after the delivery of the account, pay to the railway companies through the medium of the said committee the amount appearing from the said accounts to be so due, and may pay the same out of the moneys for the time being to the credit of the Postmaster-General at the Bank of England; but such payments shall be charged in the accounts of the Post Office to the gross receipts in respect of parcels.

(2.) The receipt of the secretary to the London Railway Clearing Committee shall be a full discharge for all sums paid by the Postmaster-General in respect of railway remuneration, and the Postmaster-General shall not be required to take any part in or otherwise be responsible for the division amongst the railway companies of the amount so paid.

6. (1.) The railway companies parties to the

arrangement under this Act shall from time to time apportion the railway remuneration received from the Postmaster-General among all the railway companies in accordance with the provisions set forth in the Third Schedule to this Act, which provisions shall have effect as if they were enacted in the body of this Act.

(2.) For the purpose of facilitating such apportionment the Postmaster-General shall for one week in each half year keep, and within twenty-eight days thereafter deliver to the secretary to the London Railway Clearing Committee, records of the number of the parcels conveyed by railway and forwarded from the different post towns in the United Kingdom during the week for which such account shall be so kept.

7. During the continuance of the arrangement under this Act the following provisions shall have effect with reference to the parcels conveyed for the Postmaster-General by railway companies:

(1.) He shall direct his officers from time to time to distribute, so far as practicable, the parcels between the different railways, so that the expense to any railway company of carrying the parcels may, with due regard to the public convenience, be proportionate to that company's share of the receipts divisible among the railway companies under this Act:

(2.) He shall direct his officers to secure so far as practicable the delivery of the parcels at the outwards railway station a reasonable time before the departure of the trains, and to be so far as practicable in attendance at the inwards station to meet on arrival any train by which parcels are expected to arrive:

(3.) The parcels shall be placed by the officers of the Postmaster-General for each separate railway station in sacks, hampers, boxes, or other receptacles, and in such reasonably convenient manner for delivery to and for transfer and conveyance by the railway companies as the Postmaster-General may from time to time direct.

(4.) The railway companies shall not be required to carry, under this Act, any such explosive or dangerous article as they, independently of this Act, for the time being refuse to carry as a parcel by passenger trains.

(5.) The parcels shall, with regard to security and compensation for loss or otherwise, be treated as letters sent by post, and no company shall incur or be subject to any liability in respect of the conveyance or loss of or damage to any of the parcels, but the railway companies shall take all reasonable

care for the security of the parcels while under their charge.

8. Where during the continuance of the arrangement under this Act the amount of railway remuneration or other matter of difference between the Postmaster-General and the railway companies parties to the said arrangement or any matter of difference between the Postmaster-General and any single railway company or any company or person or persons owning any steam vessel in respect of any services under this Act, is in pursuance of this Act referred to arbitration, the arbitration shall be in accordance with the Railway Companies Arbitration Act, 1859, and the Acts amending the same, and where it is between the Postmaster-General and the companies parties to the arrangement under this Act shall be conducted in like manner as if the said companies were one party to the arbitration on the one side and the Postmaster-General were a company party to the arbitration on the other side, and if each side appoints an arbitrator, one arbitrator only shall be appointed on behalf of the said companies under the hand of the secretary to the London Railway Clearing Committee.

9. (1.) The following railway companies shall be deemed to be railway companies parties to the arrangement under this Act:—

- (a.) the railway companies named in the First Schedule to this Act; and
- (b.) every railway company who in pursuance of this Act elects to become a party to the arrangement under this Act; and
- (c.) as regards any railway authorised after the passing of this Act, the railway company working such railway.

(2.) Any railway company in the United Kingdom not being one of the parties to the arrangement under this Act may serve a notice in writing and under seal on the Postmaster-General, and on the secretary to the London Railway Clearing Committee, expressing the desire of such company to become one of the parties to the arrangement under this Act, and upon the service of such notice the company shall be deemed to have elected to become one of the parties to the arrangement under this Act.

(3.) Any railway company in the United Kingdom not being one of the parties to the arrangement under this Act shall, nevertheless, when required by the Postmaster-General, render the services with respect to the conveyance of parcels which are required by this Act to be rendered by railway companies, and shall be entitled as remuneration for such services to receive from the railway

companies parties to the arrangement under this Act the proper proportion of the railway remuneration, and if a difference arises with respect to the amount of such remuneration and is not determined by agreement between such company and the railway companies parties to the arrangement under this Act, acting through the medium of the London Railway Clearing Committee, the difference shall be referred to arbitration; and the award on such arbitration shall determine the difference and the amount due to such company in respect of the said services, and such amount shall be paid out of the railway remuneration by the railway companies parties to the arrangement under this Act:

Provided that where a railway company is not one of the parties to the arrangement under this Act, nothing in this section shall authorise the Postmaster-General to require such company to carry parcels on any railway worked by such company on which the company does not carry any parcels traffic within the meaning of the Third Schedule to this Act.

(4.) An arbitration under this section shall be conducted in accordance with the Railway Companies Arbitration Act, 1859, and any Act amending the same, in like manner as if the companies parties to the arrangement under this Act were one party to the arbitration, but the arbitrator shall, on application under the hand of the secretary to the London Railway Clearing Committee, be appointed by the Lord Chief Justice of England, but if no such application is made and each side appoints an arbitrator, one arbitrator only shall be appointed on behalf of the companies parties to the arrangement under this Act under the hand of the secretary to the London Railway Clearing Committee.

10. Upon the determination of the arrangement under this Act the enactments then in force in relation to the conveyance of other postal packets by railway, and the remuneration to be paid for the services of the railway companies as regards such conveyance, and the determination of such remuneration (in the absence of agreement) by arbitration, shall apply in the case of parcels in like manner as in the case of other postal packets.

11. Nothing in this Act shall in any way prejudice or affect on the one hand the rights or powers of any railway company, either in the conveyance of parcels for the public on the company's own account, or the charges or conditions to be made or imposed in respect of such conveyance, or on the other hand the right of the Postmaster-General under his

powers with respect to the conveyance of mails by railway, and every company shall be entitled to be paid for all services in respect of the conveyance of mails other than parcels wholly irrespective of and without reference to the provisions of this Act.

12. (1.) Every agreement under this Act by the Postmaster-General shall, in accordance with the Post Office Acts, be made with the consent of the Treasury.

(2.) Any notice or document required for the purposes of this Act to be served on the Postmaster-General may be served by the delivery thereof to the Postmaster-General or to any of the secretaries or assistant secretaries to the Post Office, or by sending the same by post addressed to the Postmaster-General at the General Post Office.

(3.) For any purpose connected with railway remuneration in pursuance of the arrangement under this Act, any notice or document to be given or served to, on, or by the railway companies parties to the arrangement under this Act shall be given or served to, on, or by the secretary to the London Railway Clearing Committee, and the railway companies parties to the arrangement under this Act may collectively sue and be sued in the name of the said secretary; and during the continuance of the arrangement under this Act, the Postmaster-General in dealing (for the purposes of railway remuneration) with the railway companies parties to the arrangement under this Act may deal only with such companies collectively through the medium of the London Railway Clearing Committee, and shall not be required to deal, as regards railway remuneration, with any of such companies individually.

(4.) All accounts to be rendered or notices given to or served on the railway companies with reference to railway remuneration shall be rendered, given, or served by sending the same through the post to, or leaving the same at, the office of the London Railway Clearing Committee, addressed to the secretary to such committee.

13. Where any railway company own or work any steam vessel, the provisions contained in this Act with respect to the conveyance of parcels by railway shall, so far as they are applicable, extend to the conveyance of parcels by such steam vessels, and the expressions in this Act shall be construed accordingly; and expressions referring to railway stations shall refer to places where steam vessels depart, call, or arrive:

Provided that where any such steam vessel carries on communication between a port in

the United Kingdom and any place out of the United Kingdom, the remuneration for services rendered by such steam vessel in respect of the conveyance of parcels shall not be included in the railway remuneration, but shall be such as may be determined by agreement between the Postmaster-General and the company owning or working the steam vessel, or in case of difference be determined by arbitration, and the amount so determined shall be paid direct to the company, and the parcels conveyed by such steam vessel shall not, in respect of that conveyance, be deemed to be parcels conveyed by railway.

Where any steam vessel carries on regular communication between a port in the United Kingdom and any other port or place within the United Kingdom, or is a home-trade ship as defined by the Merchant Shipping Act, 1854, and such steam vessel is neither owned nor worked by any railway company, the company or person or persons by whom such steam vessel is owned or worked shall, from and after the passing of this Act, be bound to convey parcels; and the remuneration due for the services rendered by such steam vessel, in respect of the conveyance of parcels, shall be determined by agreement between the Postmaster-General and the company or person or persons owning or working such steam vessel, or in case of difference such remuneration shall be determined by arbitration, and the amount so determined shall be paid direct to such company or person or persons, and the parcels conveyed by such steam vessel shall not in respect of that conveyance be deemed to be parcels conveyed by railway.

14. (1.) Subject to any exceptions and modifications made by regulations under this section the provisions of the Acts for the time being in force relating to the Customs (in this Act referred to as Customs enactments) shall apply to goods contained in foreign parcels, in like manner, so far as is consistent with the tenor thereof, as they apply to any other goods; and persons may be punished for offences against the said enactments, and goods may be examined, seized, and forfeited, and the officers examining and seizing them shall be protected, and legal proceedings in relation to the matters aforesaid may be taken, accordingly under the said enactments.

(2.) The Treasury, on the recommendation of the Commissioners of Customs and the Postmaster-General, may from time to time make, and, when made, revoke and vary, regulations for the purpose of modifying or excepting the application of any of the Customs enactments to foreign parcels, and for the purpose of securing, in the case of such

parcels, the observance of the Customs enactments, and for enabling the officers of the Post Office to perform, for the purpose of those enactments and otherwise, all or any of the duties of the importer and exporter, and for carrying into effect any treaty, convention, or arrangement with any foreign State or the government of any British possession with reference to foreign parcels, and for punishing any contravention of the Customs enactments or of the regulations under this section.

(3.) The Postmaster-General shall have the same right of recovering any sums paid, in pursuance of the Customs enactments or otherwise under the said regulations, in respect of any foreign parcel, as he would have if the sum so paid were a rate of postage.

(4.) A contravention of the regulations in force under this section shall be deemed to be a contravention of the Customs enactments, and shall involve accordingly the like punishment of persons guilty thereof, and the like forfeiture of goods.

15. This Act shall apply to the Channel Islands and Isle of Man as if they were part of the United Kingdom, subject to the following provisions:—

(1.) Save as provided by regulations made under this section, it shall not be lawful, by means of any inland parcel, to export or remove from the Channel Islands or Isle of Man, or import or bring into the United Kingdom, or to export or remove from the United Kingdom or import or bring into the Channel Islands or Isle of Man, any goods on the exportation, importation, removal, or bringing in of which there is for the time being any prohibition or restriction, or any Customs duty payable.

(2.) Regulations under this section may be made for permitting and regulating the exportation, importation, removal, or bringing in of any such goods as above mentioned, to the extent provided by the regulations.

(3.) Subject to any exceptions or modifications made by the regulations under this section, the provisions of this Act with respect to the application of the Customs enactments to foreign parcels shall apply in like manner as if the inland parcels sent between the United Kingdom, Channel Islands, and the Isle of Man were foreign parcels, and for the purpose of such application any goods for the time being pro-

hibited by this section from being imported, exported, brought in, or removed shall be deemed to be so prohibited by the said Customs enactments.

(4.) The Treasury may from time to time, on the recommendation of the Commissioners of Customs and the Postmaster-General, make, and, when made, revoke and vary, regulations for carrying into effect this section.

(5.) All laws of those islands punishing offences committed in relation to post letters or post letter bags shall apply as if parcels were post letters, and sacks, hampers, boxes, and other receptacles containing parcels were post letter bags.

16. This Act shall be deemed to be a Post Office Act within the meaning of the Post Office (Offences) Act, 1837, and, subject to the provisions of this Act, the Post Office Acts shall apply to parcels within the meaning of this Act in like manner as they apply to other postal packets.

17. In this Act, unless the context otherwise requires—

The expression "British possession" does not include the Channel Islands or the Isle of Man, but includes all other territories and places forming part of Her Majesty's dominions.

The expression "parcel" means all such postal packets as by the regulations of the Treasury made in pursuance of the Post Office Acts are defined to be parcels:

The expression "inland parcels" means parcels posted within the United Kingdom and addressed to some place in the United Kingdom:

The expression "foreign parcels" means parcels either posted in the United Kingdom and sent to a place out of the United Kingdom, or posted in a place out of the United Kingdom, and sent to a place in the United Kingdom, or in transit through the United Kingdom to a place out of the United Kingdom:

The expression "railway company" means any person or body of persons corporate or unincorporate working a railway:

The expression "Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "London Railway Clearing Committee" means the Clearing Committee mentioned in the Railway Clearing Act, 1850.

FIRST SCHEDULE.

RAILWAY COMPANIES PARTIES TO ARRANGEMENT.

Aylesbury and Buckingham.	Londonderry and Lough Swilly.
Ballycastle.	Lynn and Fakenham.
Ballymena and Larne.	Macclesfield Committee.
Belfast and County Down.	Manchester and Milford.
Belfast and Northern Counties.	Manchester, Sheffield, and Lincolnshire.
Belfast, Holywood, and Bangor.	Manchester, South Junction, and Altrincham.
Bishop's Castle.	Maryport and Carlisle.
Brecon and Merthyr Tydvil Junction.	Midland.
Bristol Port Railway and Pier.	Midland Great Western of Ireland.
Caledonian.	Mid Wales.
Cambrian.	Neath and Brecon.
Central Wales and Carmarthen Junction.	Newry, Warrenpoint, and Rostrevor.
Cheshire Lines Committee.	Northampton and Banbury Junction.
City of Glasgow Union.	North British.
Cleator and Workington Junction.	North-eastern.
Cockermouth, Keswick, and Penrith.	North London.
Colne Valley and Halstead.	North Staffordshire.
Cork and Bandon.	Oldham, Ashton - under - Lyne, and Guide
Cork, Blackrock, and Passage.	Bridge Junction.
Cornwall, the lessees of.	Pembroke and Tenby.
Dublin, Wicklow, and Wexford.	Portpatrick.
East and West Junction.	Preston and Wyre, the lessees of.
Fleetwood, Preston, and West Riding.	Rhymney.
Finn Valley.	Severn and Wye and Severn Bridge.
Furness.	Sheffield and Midland Railway Company's
Garstang and Knotend.	Committee.
Glasgow and South-western.	Sligo, Leitrim, and Northern Counties.
Great Eastern.	South-eastern.
Great North of Scotland.	Southwold.
Great Northern.	Swindon, Marlborough, and Andover.
Great Northern, Ireland.	Taff Vale.
Great Southern and Western of Ireland.	Tendring Hundred.
Great Western.	Waterford and Central Ireland.
Gwendraeth Valleys.	Waterford and Limerick.
Highland.	Waterford and Tramore.
Lancashire and Yorkshire.	Waterford, Dungarvan, and Lismore.
Liskeard and Caradon.	Watlington and Prince's Risborough.
London and North-western.	West Lancashire.
London and South-western.	West Riding and Grimsby.
London, Brighton, and South Coast.	Wigtownshire.
London, Chatham, and Dover.	Wrexham, Mold, and Connah's Quay.
London, Tilbury, and Southend.	

SECOND SCHEDULE.

WEIGHTS AND RATES OF PARCELS.

For an Inland Parcel of a Weight	The rate of Postage shall be
Not exceeding 1 lb.	3d.
Exceeding 1 lb. and not exceeding 3 lbs.	6d.
Exceeding 3 lbs. and not exceeding 5 lbs.	9d.
Exceeding 5 lbs. and not exceeding 7 lbs.	1s.

THIRD SCHEDULE.

APPORTIONMENT AMONG THE RAILWAY COMPANIES.

1. All sums paid by the Postmaster-General under this Act to the railway companies parties to the arrangements under this Act shall be apportioned amongst the railway companies entitled to share therein by the London Railway Clearing Committee half-yearly up to the thirtieth day of June and the thirty-first day of December in each year, or to such other half-yearly days as the parcels accounts between the companies may for the time being be made up by the London Railway Clearing Committee.

2. The share of each railway company shall bear the same ratio to the whole sum divisible as that company's gross receipts from local and through parcels traffic for each half-yearly period bear to the gross receipts from local and through parcels traffic of all the companies for the same period: Provided that where upon an arbitration with any company not a party to the arrangement under this Act any sum is awarded to be paid to such company, such sum shall be so paid in lieu of the share ascertained as aforesaid.

Each company shall render to the London Railway Clearing Committee the necessary returns of their parcels traffic certified by their accountant, such returns to be subject to audit and inspection of books by the London Railway Clearing Committee.

3. If at any time after the expiration of three years from the passing of this Act, or if at any time in pursuance of regulations of the Treasury the weights or rates of postage for parcels differ from those mentioned in the Second Schedule to this Act, any one or more of the companies consider that the apportionment of the receipts from parcels traffic above provided by this Act (herein-after called "the prescribed apportionment") is inequitable, such company or companies (without prejudice to any right conferred by this Act on a company not represented by the committee) may forward to the London Railway Clearing Committee a statement in writing of the grounds of objection to the prescribed apportionment, and thereupon the following provisions shall have effect:

(a.) The secretary to the London Railway Clearing Committee shall convene a special meeting of the general managers of the railway companies parties to the arrangement under this Act (herein-after called "the conference") for the purpose of taking such statement into consideration, and shall give not less than fourteen days notice of such special meeting.

(b.) The conference shall at such special meeting take the said statement into consideration and determine by a majority of its members present at such meeting whether a *prima facie* case has been shown for altering the prescribed apportionment.

(c.) If the conference determine that a *prima facie* case has not been shown for altering the prescribed apportionment no further proceedings shall be taken, and the prescribed apportionment shall continue in force until further complaint be made under this article.

(d.) If the conference determine that a *prima facie* case has been shown for altering the prescribed apportionment, it shall proceed either at such meeting or any adjournment or adjournments thereof, or at any other meeting specially convened for the purpose as herein-before provided, to consider a fair and equitable revision of the prescribed apportionment.

(e.) The conference may by a majority of its members present at any such meeting and representing companies whose aggregate share capital is for the time being not less than three fourths of the aggregate share capital represented at such meeting determine upon a revision of the prescribed apportionment.

(f.) If the conference, for the space of three months after they have decided that a *prima facie* case for revision has been shown, fail to determine by the requisite majority upon a revision of the prescribed apportionment, then the question of revising the prescribed apportionment shall be referred to an arbitrator appointed under this schedule, who shall have power to determine whether any, and if any, what revision of the prescribed apportionment is required to remedy any inequality or injustice which may in his opinion be established upon due inquiry before him.

(g.) The conference or the arbitrator shall, in considering a revision of the prescribed apportionment, have power to deal with any complaint of inequality or injustice which may be submitted to them or him by any of the companies, and may adopt in revising the prescribed apportionment such basis of division or such data as to them or him shall seem just.

(h.) Any decision of the conference or of the arbitrator shall be final and conclusive upon the companies, and shall, unless any

further alteration is made in the weights and rates of postage of the parcels in pursuance of regulations of the Treasury, continue in force for the period of three years and thereafter until any further complaint shall be made under this enactment.

- (i.) The selection by the Postmaster-General of any route or routes for the transmission of parcels in preference to any competing route or routes shall in no case be a reason for revising the prescribed apportionment.

4. Parcels traffic for the purposes of the apportionment shall (unless and till otherwise determined by the conference, who shall have power to add to or take from the following list of excepted articles,) include all such traffic as according to the practice for the time being of the London Railway Clearing Committee is included in that expression, except—

Mails, other than parcels; fish, meat, and poultry for markets; milk; carriages;

cattle, horses, dogs, and other animals; corpses; and specie.

5. The conference shall have power from time to time to make and, if necessary, to revoke and alter all such rules and regulations as may be necessary for the purpose of giving full effect to this Act with respect to—

- (a.) The forms to be used by the companies in dealing with parcels traffic as above defined;
- (b.) The returns to be made by the companies for the purposes of this Act;
- (c.) The verification of any such returns; and
- (d.) Any matters of detail necessary or proper for carrying this schedule into effect; and all such rules and regulations shall be binding on the companies.

6. The arbitrator to determine any question between the companies under the provisions of this schedule shall be appointed when such question arises by the Lord Chief Justice of England, on the application of the London Railway Clearing Committee, and the Railway Companies Arbitration Act, 1859, shall apply to any such arbitration.

CHAP. 75.

Married Women's Property Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Married woman to be capable of holding property and of contracting as a feme sole.*
2. *Property of a woman married after the Act to be held by her as a feme sole.*
3. *Loans by wife to husband.*
4. *Execution of general power.*
5. *Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.*
6. *As to stock, &c. to which a married woman is entitled.*
7. *As to stock, &c. to be transferred, &c. to a married woman.*
8. *Investments in joint names of married women and others.*
9. *As to stock, &c. standing in the joint names of a married woman and others.*
10. *Fraudulent investments with money of husband.*
11. *Moneys payable under policy of assurance not to form part of estate of the insured.*
12. *Remedies of married woman for protection and security of separate property.*
13. *Wife's ante-nuptial debts and liabilities.*
14. *Husband to be liable for his wife's debts contracted before marriage to a certain extent.*
15. *Suits for ante-nuptial liabilities.*
16. *Act of wife liable to criminal proceedings.*
17. *Questions between husband and wife as to property to be decided in a summary way.*
18. *Married woman as an executrix or trustee.*
19. *Saving of existing settlements, and the power to make future settlements.*
20. *Married woman to be liable to the parish for the maintenance of her husband.*
21. *Married woman to be liable to the parish for the maintenance of her children.*

- 22. *Repeal of 33 & 34 Vict. c. 93. ; 37 & 38 Vict. c. 50.*
- 23. *Legal representative of married woman.*
- 24. *Interpretation of terms.*
- 25. *Commencement of Act.*
- 26. *Extent of Act.*
- 27. *Short title.*

**An Act to consolidate and amend the
Acts relating to the Property of Mar-
ried Women. (18th August 1882.)**

WHEREAS it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act (1870)":

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. (1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise.

(3.) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

(4.) Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5.) Every married woman carrying on a

trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property and to dispose of in manner aforesaid all real and personal property which shall, belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public

stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *prima facie* evidence that she is beneficially entitled thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof, without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding sections, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married

woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement regulating such corporation or company.

8. All the provisions herein-before contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in, or shall be allotted to, placed, registered, or transferred to or into, or made to stand in, the name of any married woman jointly with any persons or person other than her husband.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an

application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

11. A married woman may by virtue of the power of making contracts herein-before contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending

the same. The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, and also, (subject, as regards her husband, to the proviso herein-after contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but, except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding: Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect

thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for

which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any judge of the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of

certiorari or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole.

19. Nothing in this Act contained shall interfere with or affect any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman, or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon appli-

cation of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always, that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren.

22. The Married Women's Property Act, 1870, and the Married Women's Property Act, 1870, Amendment Act, 1874, are hereby repealed: Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastancy committed by any married woman being a trustee or executrix or administratrix either

before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word "property" in this Act includes a thing in action.

25. The date of the commencement of this

Act shall be the first of January one thousand eight hundred and eighty-three.

26. This Act shall not extend to Scotland.

27. This Act may be cited as the Married Women's Property Act, 1882.

CHAP. 76.

Merchant Shipping (Colonial Inquiries) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Construction of Act.*
3. *Colonial courts or tribunals to have jurisdiction to make inquiry into charges of misconduct or incompetency and shipping casualties in certain cases occurring outside the limits of the colony.*
4. *Colonial legislative authorities empowered to authorise inquiries into shipping casualties and charges of misconduct and incompetency in certain cases.*
5. *Suspension or cancellation of certificates.*
6. *Appeal from colonial courts.*
7. *Repeal of part of 17 & 18 Vict. c. 104. s. 242.*

An Act to amend the Merchant Shipping Acts, 1854 to 1880, with respect to Colonial Courts of Inquiry. (18th August 1882.)

WHEREAS it is expedient to amend the Merchant Shipping Acts, 1854 to 1880, with respect to Inquiries held in British possessions abroad into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or into shipwrecks or other casualties affecting ships:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Merchant Shipping (Colonial Inquiries) Act, 1882.

2. This Act shall be construed as one with the Merchant Shipping Act, 1854, and the Acts amending the same, and the said Acts and this Act may be cited collectively as the Merchant Shipping Acts, 1854 to 1882.

3. Every court or tribunal which is already authorised or which may hereafter be authorised by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of

masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, shall in the cases following; that is to say,

- I. When the incompetency or misconduct has occurred on board of a British ship on or near the coasts of the British possession or on board of a British ship in the course of a voyage to a port within the British possession:
- II. When the incompetency or misconduct has occurred in any part of the world on board a British ship registered in the British possession:
- III. When the shipwreck or casualty occurs to a British ship on or near the coasts of the British possession or to a British ship in the course of a voyage to a port within the British possession:
- IV. When the shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession:
- V. When the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board of such British ship is found in the British possession:
- VI. When some of the crew of a British ship which has been wrecked or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession;

wherever the incompetency, misconduct, shipwreck, or casualty has occurred, have the same

jurisdiction as such court or tribunal would have had if such incompetency, misconduct, shipwreck, or casualty had occurred within the ordinary jurisdiction of such court or tribunal, but subject to all provisions, restrictions, and conditions which would have been applicable if they had so occurred: Provided that no inquiry shall be held under this Act into any shipwreck, or other casualty, or charge of incompetency or misconduct, which has once been the subject of such an inquiry and has been reported on by any competent court or tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been suspended or cancelled by a naval court; and provided also, that where any inquiry has been commenced in the United Kingdom no inquiry shall be made in the same case under the authority of this Act in any British possession.

In all the above cases the "British possession" shall mean the British possession by the legislative authority whereof the court or tribunal is authorised to make inquiry.

4. The legislative authority in any British possession is hereby empowered to authorise courts or tribunals to make inquiries in the cases enumerated in the last preceding section of this Act into charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, or as to shipwrecks or other casualties affecting ships, subject to the provisions in the last preceding section of this Act mentioned.

5. The powers of suspending or cancelling the certificate of any master, mate, or engineer of a ship, conferred by the provisions of the Merchant Shipping Acts, 1854 to 1880, upon or after any inquiry or investigation held under the provisions of the said Acts, shall be applicable to and be exercised upon or after any inquiry by any court or tribunal authorised by this Act, or authorised by the legislative authority of any British possession under the powers conferred by this Act. Such power of suspension or cancellation shall be exercised by the

court or tribunal holding the inquiry in the manner provided by section twenty-three of the Merchant Shipping Act Amendment Act, 1862, and the Board of Trade shall in such cases have all the powers conferred upon them by the said section.

6. Whenever any inquiry authorised by or in pursuance of this Act has been held, a rehearing of the case may be ordered, and if an application for such rehearing has not been made or has been refused, an appeal shall lie from any order of finding of the court or tribunal holding such inquiry to the following court, namely, the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice in England.

Provided always, that no appeal shall lie from any order or finding in an inquiry into a casualty affecting a ship registered in a British possession, or from any decision respecting the suspension or cancellation of the certificate of a master, mate, or engineer, unless such certificate has been granted under the authority of the Merchant Shipping Act, 1854, or any Act amending the same, or of the Merchant Shipping Colonial Act, 1869.

Any such appeal shall be subject to and conducted in accordance with such conditions and regulations as may from time to time be prescribed by general rules made under section thirty of the Merchant Shipping Act, 1876.

7. The words "and such report is confirmed" by the governor or person administering the "government of such possession" in case (V) of the cases enumerated in section two hundred and forty-two of the Merchant Shipping Act, 1854, are hereby repealed, and this repeal shall be deemed to take effect as if the said words had been expressly repealed by the Merchant Shipping Act Amendment Act, 1862. The confirmation of the report required by the said words shall be deemed to have been no longer necessary after the passing of the Merchant Shipping Act Amendment Act, 1862, as a condition precedent to the suspension or cancellation of the certificate of any master, mate, or engineer.

CHAP. 77.

Citation Amendment (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
 2. *Commencement of Act.*
 3. *Citation may be by registered letter.*
 4. *Execution. Notice on back of letter. Letter not delivered to be returned to clerk of court.*
 5. *Fees.*
 6. *Mode of service optional.*
 7. *Definition.*
- SCHEDULES.

An Act to amend the Law of Citation
in Scotland. (18th August 1882.)

WHEREAS by the Citation Amendment (Scotland) Act, the process of citation in Scotland was amended in certain particulars, and it is desirable that it should be further amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Citation Amendment (Scotland) Act, 1882.

2. This Act shall commence on the first day of January one thousand eight hundred and eighty-three.

3. From and after the commencement of this Act—

In any civil action or proceeding in any court or before any person or body of persons having by law power to cite parties or witnesses, any summons or warrant of citation of a person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland by an officer of the court from which such summons, warrant, or judicial intimation was issued, or other officer who, according to the present law and practice might lawfully execute the same, or by an enrolled law agent, by sending to the known residence or place of business of the persons upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address, if it continues to be his legal domicile or proper place of citation, or to the office of the keeper of edictal citations, where the summons, warrant, or judicial intimation is required to be sent to that office, a registered

letter by post containing the copy of the summons or petition or other document required by law in the particular case to be served, with the proper citation or notice subjoined thereto, or containing such other citation or notice as may be required in the circumstances, and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business, or at his last known address if it continues to be his legal domicile or proper place of citation.

4. The following provisions shall apply to service by registered letter:—

- (1.) The citation or notice subjoined to the copy or other citation or notice required in the circumstances shall specify the date of posting, and in cases where the party is not cited to a fixed diet, but to appear or lodge answers or other pleadings within a certain period, shall also state that the induciæ or period for appearance or lodging answers or other pleadings is reckoned from that date:
- (2.) The induciæ or period of notice shall be reckoned from twenty-four hours after the time of posting:
- (3.) The execution to be returned by the officer or law agent shall be accompanied by the Post Office receipt for the registered letter. The execution returned by a law agent shall for all purposes be equivalent to an execution by an officer of court. The execution may be in the form contained in the First Schedule hereto:
- (4.) On the back of such registered letter besides the address there shall be written or printed the following notice or a notice to the like effect:

This letter contains a citation to or intimation from [*specify the court*]. If delivery of the letter cannot be made, it is to be returned immediately to [*give the official*

name and office or place of business of the clerk of court]:

- (5.) If delivery of the letter be not made because the address cannot be found, or because the house or place of business at the address is shut up, or because the letter carrier is informed at the address that the person to whom the letter is addressed is not known there, or because the letter was refused, or because the address is not within a postal delivery district and the letter is not called for within twenty-four hours after its receipt at the post office of the place to which it is addressed, or for any other reason, the letter shall be immediately returned through the Post Office to the clerk of court, with the reason for the failure to deliver marked thereon, and the clerk shall make intimation to the party at whose instance the summons, warrant, or intimation was issued or obtained, and shall, where the order for service was made by a judge or magistrate, present the letter to a judge or magistrate of the court from which the summons, warrant, or intimation was issued, and he may, if he shall think fit, order service of new, either according to the present law and practice or in the manner herein-before provided, and if need be substitute a new

diet of appearance. Where the judge or magistrate is satisfied that the letter has been tendered at the proper address of the party or witness and refused, he may in the case of a witness, without waiting for the diet of appearance, issue second diligence to secure his attendance, and in the case of a party hold the tender equal to a good citation.

5. The fees for service under this Act shall be those contained in the Second Schedule hereto, and no other or higher fees shall be allowed on taxation.

6. It shall be lawful to execute summonses and warrants of citation, warrants of service, judicial intimations, either according to the existing law and practice or in the manner provided by this Act:

Provided that no higher fees shall be allowed on taxation than those contained in the Schedule hereto, unless the judge or magistrate deciding the case shall be of opinion that it was not expedient in the interests of justice that such service should be made in the manner herein-before provided.

7. The word "person" shall include corporation, company, firm, or other body requiring to be cited or to receive intimation.

SCHEDULES.

FIRST SCHEDULE.

This summons, or warrant of citation, or note of suspension, or petition, or other writ or citation executed [or intimated] by me [insert name] messenger at arms [or other officer or law agent] against [or to] [insert name or names] defender [or defenders, or respondent or respondents, or witness or witnesses, or haver or havers, or otherwise as the case may

be], by posting on _____ last, between the hours of _____ and _____, at the post office of _____, a copy of the same to him [or them], with citation [or notice] subjoined, [or citation or notice where no copy is sent], in a registered letter [or registered letters], addressed as follows, viz.:

Signature of officer or agent.

SECOND SCHEDULE.

Fees for Service or Citation by Registered Letter and for Returning Execution.

A. COURT OF SESSION.

1. PARTIES—	s.	d.
If one party	-	3 6
If more than one, for each party after the first	-	2 6
2. WITNESSES—		
For citing each witness	-	1 6
3. POST OFFICE CHARGE FOR REGISTRATION AND POSTAGE OF LETTER.		

B. INFERIOR COURTS.

1. PARTIES—

	s.	d.
For citing to small debt courts, claim not exceeding 5 <i>l</i> . -	1	0
Claim above 5 <i>l</i> . and not exceeding 12 <i>l</i> . -	1	6
For citing to debts recovery court -	2	0
For citing to ordinary court or any other citation not above included -	2	6

Where there are more parties than one cited in the same cause and only one execution is necessary, the above-mentioned fees respectively shall be allowed for the first party only, and two-thirds thereof for every other.

2. WITNESSES—

	s.	d.
(1.) Small debt and debts recovery courts:—		
For citing one witness -	1	0
For citing every witness after the first for the same diet -	0	8
(2.) Ordinary court:—		
For citing one witness -	1	6
For citing every witness after the first for the same diet -	1	0

3. POST OFFICE CHARGE FOR REGISTRATION AND POSTAGE OF LETTER.

CHAP. 78.

Fishery Board (Scotland) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Definitions.*
3. *Dissolution of Board of British White Herring Fishery.*
4. *Establishment and constitution of Fishery Board.*
5. *Functions of Board. Herring fisheries. Deep sea fisheries. Salmon fisheries.*
6. *Inspector of salmon fisheries.*
7. *Act not to apply to River Tweed.*
8. *Salaries and expenses.*

SCHEDULES.

An Act to establish a Fishery Board for Scotland. (18th August 1882.)

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Fishery Board (Scotland) Act, 1882.

2. In this Act—

The expression "Herring Fishery Acts" shall mean the Acts mentioned in the First Schedule.

The expression "Salmon Fishery Acts" shall mean the Acts mentioned in the Second Schedule.

3. On the sixteenth day of October one thousand eight hundred and eighty-two the

Board of British White Herring Fishery shall be dissolved, and the present Commissioners shall be discharged of their duties.

4. A Fishery Board shall be established for Scotland.

(1.) The Board shall consist of the following members:—the Sheriffs of three Sherifdoms, who shall be appointed by Her Majesty, and shall hold office during their tenure of the office of sheriff.

Six members, to be appointed by Her Majesty, who shall hold office for five years, and may be reappointed.

(2.) It shall be lawful to Her Majesty to nominate one member of the Board to be chairman and another to be deputy chairman. The chairman shall receive such salary as the Commissioners of Her Majesty's Treasury may assign. Three members shall be a quorum.

(3.) There shall be a secretary to the Board, who shall be appointed by Her Majesty,

and shall receive such salary as the Commissioners of Her Majesty's Treasury may assign.

- (4.) The office of the Board shall be in Edinburgh, and the Board shall appoint such clerks and officers, and at such salaries, as may be sanctioned by the Commissioners of Her Majesty's Treasury.
- (5.) The first meeting of the Board shall be on the sixteenth day of October one thousand eight hundred and eighty-two.

5. (1.) The Fishery Board shall have all the powers and duties conferred upon the present Board of British White Herring Fishery by the Herring Fishery Acts and the Sea Fishery Acts, 1868 and 1875, and any Order in Council following thereon, except the duty of making an annual report to the Board of Trustees for Manufactures, and the power of appointing a secretary; and shall take cognizance of everything relating to the coast and deep sea fisheries of Scotland, and take such measures for their improvement as the funds under their administration and not otherwise appropriated may admit of, but without interfering with any existing public authority or private right.

(2.) The Fishery Board shall have the general superintendence of the salmon fisheries of Scotland, and shall have the powers and duties of Commissioners under the Salmon Fishery Acts, but without prejudice to or interference with the powers of district boards.

(3.) The Fishery Board shall comply with any instructions which may be issued by Her Majesty's Principal Secretary of State for the Home Department, and shall make an annual report to him containing a statistical account of the fisheries, and suggestions for their regulation and improvement, which report shall be presented to Parliament.

6. It shall be lawful to Her Majesty's Principal Secretary of State for the Home Department to appoint an inspector of the salmon fisheries of Scotland, who shall hold office during pleasure, and to pay to him such salary as may be determined by the Commissioners of Her Majesty's Treasury.

The inspector shall under the directions of the Fishery Board inspect all the salmon fisheries of Scotland, and inquire into the operation of the Salmon Fishery Acts, and report thereon from time to time to the Board, and shall attend the meetings of the Board when summoned by the chairman.

7. This Act shall not apply to the Tweed as defined by the Tweed Fisheries Amendment Act, 1859.

8. All salaries and expenses of the Fishery Board shall be defrayed from moneys to be provided by Parliament.

SCHEDULES.

SCHEDULE I.

HERRING FISHERY ACTS.

11 Geo. III. c. 31. ss. 11, 12, 13.	-	An Act for the encouragement of the White Herring Fishery.
48 Geo. III. c. 110.	-	An Act for the further encouragement and better regulation of the British White Herring Fishery until the 1st day of June 1813, and from thence to the end of the then next session of Parliament.
55 Geo. III. c. 94.	-	An Act to continue and amend several Acts relating to the British White Herring Fishery.
1 & 2 Geo. IV. c. 79.	-	An Act to repeal certain bounties granted for the encouragement of the Deep Sea British White Herring Fishery, and to make further regulations relating to the said Fishery.
5 Geo. IV. c. 64.	-	An Act to amend the several Acts for the encouragement and improvement of the British and Irish Fisheries.
1 William IV. c. 54.	-	An Act to revive, continue, and amend several Acts relating to the Fisheries.
14 & 15 Vict. c. 26.	-	An Act to amend the Acts relating to the British White Herring Fishery.

21 & 22 Vict. c. 69.	-	An Act to impose fees on the branding of barrels under the Acts concerning the Herring Fisheries in Scotland.
23 & 24 Vict. c. 92.	-	An Act to amend the law relative to the Scottish Herring Fisheries.
24 & 25 Vict. c. 72.	-	An Act to make further provision for the regulations of the British White Herring Fishery in Scotland.
28 & 29 Vict. c. 22.	-	An Act to amend the Acts relating to the Scottish Herring Fisheries.
30 & 31 Vict. c. 52.	-	An Act to alter and amend the Acts relating to the British White Herring Fisheries.
37 & 38 Vict. c. 25.	-	An Act to remove the restrictions contained in the British White Herring Fishery Acts in regard to the use of fir wood for herring barrels.

SCHEDULE II.

SALMON FISHERY ACTS.

25 & 26 Vict. c. 97.	-	An Act to regulate and amend the law respecting the Salmon Fisheries of Scotland.
26 & 27 Vict. c. 50.	-	An Act to continue the powers of the Commissioners under the Salmon Fisheries (Scotland) Act until the 1st day of January 1865, and to amend the said Act.
27 & 28 Vict. c. 118.	-	An Act to amend the Acts relating to Salmon Fisheries in Scotland.
31 & 32 Vict. c. 123.	-	An Act to amend the law relating to Salmon Fisheries in Scotland.

CHAP. 79.

India (Home Charges Arrears) Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Sanction of arrangement of Treasury Minute of 2 July 1878.*

An Act to make provision for the arrangement of Accounts between the Commissioners of Her Majesty's Treasury and the Secretary of State in Council of India in respect of certain Home Charges for Her Majesty's Forces serving in India.

(18th August 1882.)

WHEREAS certain home charges of Her Majesty's forces serving in India payable out of the revenues of India are defrayed in the first instance out of the Exchequer, and under an arrangement in force since the thirty-first day of March one thousand eight hundred and seventy, advances were from time to time made out of the revenues of India to the Exchequer by way of repayment of those charges, and the actual expenditure was to be subsequently ascertained and adjusted:

And whereas differences have been pending between the Secretary of State for the War Department and the Secretary of State in Council of India which prevented such adjustment, and in consequence the accounts of the said actual expenditure fell into arrear; so that while the claim on the part of the Exchequer for the period from the thirty-first day of March one thousand eight hundred and seventy to the thirty-first day of March one thousand eight hundred and seventy-seven amounted to three million three hundred and two thousand two hundred and forty-six pounds eleven shillings and eightpence the total amount advanced by way of repayment to the Exchequer out of the revenues of India amounted only to two million eight hundred and ninety thousand pounds, and the balance claimed by the Commissioners of Her Majesty's Treasury as due to the Exchequer, but disputed in part by the Secretary of State in

Council of State of India, amounted to four hundred and twelve thousand two hundred and forty-six pounds eleven shillings and eightpence, which balance was reduced by a subsequent settlement of twenty-one thousand six hundred and thirty-five pounds to a net claim of three hundred and ninety thousand six hundred and eleven pounds eleven shillings and eightpence as due to the Exchequer but in part disputed as before mentioned:

And whereas the Commissioners of Her Majesty's Treasury, by a Minute dated the second day of July one thousand eight hundred and seventy-eight, proposed as an arrangement of the said differences and accounts that the sums actually advanced out of the revenues of India to the Exchequer by way of repayment of the said charges during the years above mentioned should be taken in full discharge of all the claims of the Exchequer upon

the revenues of India in respect of the aforesaid charges:

And whereas it is expedient to sanction the said arrangement:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the India (Home Charges Arrears) Act, 1882.

2. The arrangement of the above-recited differences and accounts proposed in the said Minute of the Commissioners of Her Majesty's Treasury, dated the second day of July one thousand eight hundred and seventy-eight, is hereby sanctioned.

CHAP. 80.

Allotments Extension Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Interpretation.*
2. *Short title.*
3. *Extent of Act.*
4. *Trustees of lands vested for benefit of the poor to give notice as to letting.*
5. *Power to let lands inconveniently situated.*
6. *Saving old rights.*
7. *Preference to cottagers living in parishes where the lands are situate.*
8. *Where lands are held partly for benefit of poor.*
9. *Charity Commissioners to settle rules in certain cases.*
10. *In case of neglect of trustees to publish notice.*
11. *Certificate of Charity Commissioners sufficient defence for trustees.*
12. *Arrears of rent, and in case of refusal of tenant to quit.*
13. *Letting of allotments.*
14. *Provision for allotments in scheme of Charity Commissioners.*
15. *Act not to impair powers conferred by Endowed Schools Acts.*

SCHEDULE.

An Act for the Extension of Allotments. (18th August 1882.)

WHEREAS by an Act 2 William IV., cap. 42, the trustees of lands allotted under enclosure Acts or otherwise appropriated for the benefit of the poor of any parish, together with the churchwardens and overseers of the poor in parish vestry assembled, are required to let portions of such lands in quantities of not more than one statute acre to any one individual, according to their discretion, as a

yearly occupation from Michaelmas to Michaelmas, and at such rent as land of the same quality is usually let for in the said parish, to industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, or dwelling within or near its bounds:

And whereas the provisions of the said Act, from its limited application and other causes, have been only partially carried out:

And whereas it is expedient that having regard to the present Poor Law, the benefit

thereof should be extended to all the irremovable poor, and that the same should be extended to all lands, whether cultivated or uncultivated, held for the benefit of the poor as herein-after described, and that a summary remedy should be afforded:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act "trustees" shall mean trustees, feoffees, and managers, whether corporate or sole, or a committee of the same in such cases as are provided for in the Poor Allotments Management Act, 1873.

2. This Act may be cited as the Allotments Extension Act, 1882.

3. This Act shall not apply to Scotland or Ireland.

4. All trustees in whom lands are vested or by whom the same are held or managed for the benefit of the poor of any parish or place in or adjoining to that in which such lands are situate, and whereof the rents or produce are distributed in gifts of money, doles, fuel, clothing, bread, or other articles of sustenance or necessity, shall, where such lands are not otherwise used for the benefit of the parish in which it is situate as a recreation ground, or otherwise for the enjoyment or general benefit of the inhabitants, take proceedings, subject as herein-after mentioned, for letting such lands in allotments to cottagers, labourers, and others, and—

(1.) They shall set apart for the purpose of this Act such field or other portion of the said lands as is most suitable, as regards distance and otherwise, for allotments, and give public notice, in manner directed by the schedule to this Act, of the field or portion so set apart, specifying the situation and extent thereof, and the rent per acre or rod which they are ready to accept for the same when let in allotments, and the times and places at which applications for allotments are to be made:

(2.) If any applications for an allotment are received within the time fixed by the notice the trustees shall forthwith to obtain possession of the field or portion set apart, or of so much thereof as is required for the applications, and to fence the same (if necessary), and to let the same in manner provided by this Act:

(3.) If the whole of the field or portion so

set apart is let in allotments the trustees shall proceed as soon as they have power so to do to set apart another field or portion of their lands for the purpose of this Act, and give public notice thereof as directed by this section, and so on until the whole of their lands are let in allotments, or no applications are received for further allotments:

Provided that—

(a.) If application is made within the time aforesaid for part only of the field or portion so set apart, the remainder thereof may be let as provided by this Act in the case of unlet allotments; and

(b.) It shall not be necessary for the trustees to set apart any portion of any such lands as aforesaid, the separation of which from the remainder of such lands not set apart for the time being may make it impossible to let such remainder without substantial loss to the charity, when the whole of such lands cannot conveniently be set apart for allotments; and they shall have the same powers of letting any remainder of such lands, not set apart for the time being, as if this Act had not passed; and

(c.) If no application is made within the time aforesaid for any part of the field or portion so set apart, the like public notice as is required in the first instance shall be given by the trustees once in every succeeding year; and

(d.) Where the said lands are at any time held on lease, the trustees shall proceed to act in pursuance of this Act upon the expiration of such lease, and this Act shall apply as if such expiration were the passing of this Act.

5. If any of the said lands shall be found to lie at an inconvenient distance from the residences of any cottagers or labourers it shall be lawful for the trustees to let such lands, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof, for the purposes of this Act, other land more favourably situated for allotments to the poor of the parish or place for whose benefit such lands are held in trust.

6. Neither this Act nor section twelve of the Poor Allotments Management Act, 1873, shall extend or be applicable to any lands with regard to which the provisions of the second William the Fourth, chapter forty-two, have been put into operation; but all industrious cottagers of good character, being day labourers or journeymen, whether legally settled in any parish in which the said Act of second William the Fourth, chapter forty-two, has been put

into operation, or dwelling within its bounds or those of the adjoining parishes, or being poor persons in any such parishes, shall at all times be entitled to and enjoy the benefits, rights, and privileges created and conferred by the second William the Fourth, chapter forty-two, in as full and ample a manner as they would have been entitled to and have enjoyed the same if they had been legally settled in the parish and this Act and section twelve of the Poor Allotments Management Act, 1873, had not been passed.

7. The provisions of this Act shall apply to lands held for the benefit of the poor of any parish or place situated in or adjoining to the same parish in which such poor dwell; but where the said lands are situated in or adjoining to several parishes, preference shall be given to the cottagers and labourers being inhabitants of the parish or place for the benefit of the poor of which lands are so held.

8. Where any lands shall be held as aforesaid, partly for the benefit of the poor, and partly for other objects, the provisions of the Act shall apply to such a proportion of the entire quantity of the said lands as the amount of the gross income applicable to the poor shall bear to the entire gross income thereof; and in case of difference as to the amount of such gross income, or as to the said proportion, the difference shall be referred to the Charity Commissioners for England and Wales, in this Act referred to as the Charity Commissioners, whose decision shall be final.

9. The trustees or the majority of them may from time to time make and, when made, revoke and vary such rules as may be necessary for the appointment and powers of local managers of allotments under this Act, whether as tenants or agents of the trustees or otherwise, and for preventing the same being built upon or sublet, and preventing any undue preference in such letting, and all other necessary rules, and for giving effect to the provisions of the Act; and such rules as are for the time being in force under this section shall be binding on all persons and corporations whatsoever.

Provided that—

(a.) A copy of all rules made under this section shall be sent to the Charity Commissioners as soon as may be after they are made, and the Charity Commissioners may, if they think fit, by order disallow any rules made under this section, and upon such disallowance the same shall be void:

(b.) Such public notice as is provided by the

schedule to this Act shall be given of all rules in force under this section, and a copy thereof shall be at all times given gratis to any cottager or labourer demanding the same:

(c.) Any four cottagers or labourers, or any of the trustees, if aggrieved by any such rules, whether in respect of anything contained therein, or of any omission therefrom, or if aggrieved by the want of any rules, may complain to the Charity Commissioners, and the Charity Commissioners, if they think such complaint is well grounded, may make such order as appears to them necessary to remedy the complaint. Any such order may rescind or alter any such rules, and may make any rules for the purposes of this section, and such rules shall be duly observed by all persons and corporations whatsoever.

10. If the trustees of any such lands shall omit, neglect, or refuse to give such public notice or to proceed for such setting apart of land as is required by this Act, or otherwise to comply with the provisions of this Act, any of the said cottagers or labourers, not being less than four, who would be entitled to rent any allotment out of the said lands under the provisions of this Act if the same had been duly observed shall be entitled, after due notice to such trustees requiring them to remedy the omission, neglect, or refusal specified in the notice, to apply to the Charity Commissioners, and the said Commissioners shall inquire into the complaint, and, if satisfied that such omission, neglect, or refusal exists, and requires to be remedied, may issue their order for remedying, in manner specified therein, such omission, neglect, or refusal, and such order may be enforced in like manner as an order made by the Commissioners under the Charitable Trusts Acts.

11. If in the opinion of the trustees such lands as aforesaid shall, either on the ground of distance or on any other ground, be so unsuitable for allotments that no part thereof can be usefully set apart for the purposes of this Act, they shall be at liberty to apply to the Charity Commissioners for a certificate to that effect; and if such certificate be granted they shall not be bound to set apart under this Act any part of the lands to which the same shall apply: and they shall annually give public notice of such certificate so long as the same shall remain in force in the manner directed by the schedule to this Act. Provided always, that it shall be lawful for the said Commissioners at any time, for any cause shown to their satisfaction by any person

entitled to make an application to them under this Act, to revoke such certificate: Provided also that every certificate given by the Charity Commissioners under this section, unless and until revoked by them, shall be final and conclusive.

12. Any rent for any allotment let in pursuance of this Act, and the possession of such allotment in the case of any notice to quit, or other failure to deliver up possession of the same as required by law, may be recovered in all respects as if the same were an allotment under the Inclosure Act, 1845, and the Acts amending the same, and sections one hundred and ten and one hundred and eleven of the Inclosure Act, 1845, shall apply as if they were herein enacted, and as if the trustees, or in the case of the appointment of local managers, such managers, were the allotment wardens within the meaning of the said sections.

13. With respect to the letting of allotments in any field or portion of land set apart for the purposes of this Act the following provisions shall have effect:

- (1.) Public notice of the intention to let the same shall be given in manner directed in the schedule to this Act:
- (2.) Every allotment shall be let free of all charges (that is to say), tithe, tithe rent-charge, rates, taxes, and outgoings whatsoever, and shall be let at such rent as land of the same quality is usually let for in the same parish, with such addition as is necessary to satisfy the said charges; and in this section the expression "outgoings" includes the expense of getting possession, and allotting, dividing, and fencing the field or portion of land set apart, and collecting the rents, and any sum payable for such draining of the allotments and means of approach to the allotments as may be necessary:
- (3.) The trustees shall, for the purposes of all rates, taxes, tithes, and tithe rent-

charge, be deemed to be the occupiers of the allotments:

- (4.) One person shall not hold any allotment or allotments exceeding one acre:
- (5.) No building whatever shall be erected for or used as a dwelling or workshop on any part of any allotment, and if any building is so erected or used the trustees shall forthwith pull down the same and sell and dispose of the materials thereof, and the proceeds of the sale shall be applicable in like manner as the rent of the allotment:
- (6.) If at any time the trustees are unable to let any allotment or any portion thereof, they may let the same, or such portion thereof as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable them to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let for allotments; but such letting shall not be deemed to exonerate the trustees from giving public notice under the foregoing provisions of this section.

14. Where a scheme is made by the Charity Commissioners after the passing of this Act in relation to any charity, and part of the endowment of such charity consists of land other than buildings and the appurtenances of buildings, the Charity Commissioners shall insert in such scheme a provision authorising the trustees of the charity to set apart portions of the said lands for allotments, and the same may be set apart and let as allotments in like manner as is directed by this Act.

15. Nothing in this Act contained shall be taken to impair or alter any powers conferred on the trustees of any charities or the Charity Commissioners by the Endowed Schools Acts or the Acts amending the same.

SCHEDULE.

Regulations as to Public Notices and Lettings.

1. Public notice, for the purposes of this Act, shall be given by fixing the notice on the doors of the church of the parish in which the land referred to in the notice is situate, and if there is no church, then on some public building or conspicuous place therein.

2. Public notice of the setting apart under this Act of a field or portion of land shall be given in the month of February, or such other month as the trustees may fix, and the first notice shall be given in the said month next after the passing of this Act, and if not so given shall be given as soon as may be

afterwards, at such time as may be fixed by the trustees, or, in case of their default, by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

Letting.

3. The public notice of the intention to let an allotment out of land when set apart shall specify the amount of land to be let, and the rent per acre or rod to be paid, and the place and time at which applications are to be made, and shall be given annually in the month of June, or in such other month as may be fixed by, or in pursuance of, rules under this Act: Provided that in any year in which there will be no allotment vacant out of land already set apart, it shall not be necessary to give such notice.

4. The first public notice of the intention to let an allotment shall be given in the month of June next after the trustees obtain possession

of the allotment, or at such other time, not more than one month later, as may be fixed by or in pursuance of rules under this Act; and, if not so given, shall be given at such time as may be fixed by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

5. The time for applications for allotments out of land when already set apart shall be the month of August, or such other month as may be fixed by or in pursuance of rules under this Act.

6. The allotments shall be let to persons in the order in which they apply, or in accordance with such other order as may be provided by rules under this Act, so that there shall be no undue preference shown as regards the persons to whom they are let.

7. Each allotment shall be let on a yearly tenancy beginning at Michaelmas day, or at such other day as may be fixed by or in pursuance of rules under this Act.

CHAP. 81.

Somersham Rectory Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title.*
2. *Commencement of Act.*
3. *Rectory of Somersham to be disannexed from regius professorship.*
4. *Rectory vested in the University of Cambridge.*
5. *University to have powers of rector.*
6. *Neither professor nor university to have cure of souls.*
7. *Vicarage constituted with cure of souls.*
8. *Patronage of vicarage vested in bishop of diocese.*
9. *Rectory income to be divided between regius professor and vicar.*
10. *Vicar to employ two curates.*
11. *Vicar to have rectory house.*
12. *Vicar to be responsible for dilapidations.*
13. *First fruits to be payable on collation of vicar.*
14. *First fruits to be paid out of rectory income.*
15. *Provision as to costs of this Act.*

An Act for disannexing the Rectory of Somersham from the Office of Regius Professor of Divinity in the University of Cambridge, and for making better provision for the Cure of Souls within the said Rectory; and for other purposes. (18th August 1882.)

WHEREAS His late Majesty King James the First, for the increase of the stipend of the regius professor or reader of divinity in the University of Cambridge, did by his Letters

Patent bearing date the twenty-sixth day of August, in the third year of his reign, grant to the chancellor, masters, and scholars of the said University of Cambridge and their successors all that his advowson, donation, free disposition, and right of patronage of the Rectory of Somersham (together with Colne and Pidley, and other chapelries, rights, members, and appurtenances) in the county of Huntingdon, and did by the same Letters Patent signify and declare it to be his royal will and pleasure that the said rectory should for ever thereafter be held and enjoyed by the said professor for

so long time as he should continue in the said office, and did thereby further signify and declare his royal will and intention to be that an Act of Parliament should be obtained for that purpose:

And whereas by an Act passed in the tenth year of Her late Majesty Queen Ann for, amongst other things, confirming and rendering more effectual the said Letters Patent, it was enacted that the canonry and rectories in the said Act mentioned should be annexed to the offices or places also in the said Act mentioned, namely, among others, that the said Rectory of Somersham, and all members, tithes, lands, tenements, hereditaments, profits, and emoluments whatsoever thereto belonging, or in anywise appertaining, or with the same used or enjoyed, was and should thereby be united and for ever annexed unto the said office or place of regius professor of divinity, and should be held and enjoyed by the person already placed in the said office or place; and by such other person or persons as should from time to time for ever thereafter be placed and put into the said office or place in as full and ample manner to all intents and purposes as if they were duly presented, nominated, admitted, instituted, and inducted thereunto; and the said professor or reader and his successors for the time being, during such time or times only as they should continue in the said office or place, should by virtue of such office or place for ever thereafter have and hold the said rectory without any presentation, admission, institution, or induction, or any other act or thing whatsoever to entitle them thereunto, and should be and were thereby declared to be during their continuance in the said office or place full and perfect incumbents of the said rectory to all intents and purposes whatsoever; and that so often as it should happen that the said office or place should become void by death, resignation, or otherwise, the said rectory should at the same time become void, and the person that should be placed in such office or place so become void should by virtue of such office or place only have and enjoy the said rectory for so long time as he should continue in such office or place and no longer: And it was thereby provided that the said professor should celebrate divine service and perform all other parochial duties relating to the cure of souls within the said rectory which any other rector of the said rectory had theretofore done and performed, and were by law obliged to do and perform, or should allow to learned and able curates to be licensed by the bishop or ordinary of the diocese who should be constantly residing within the said rectory such competent salaries and stipends as the said bishop or

ordinary should judge sufficient: And it was thereby also provided that neither that Act nor anything therein contained should excuse or be construed to excuse the said professor from the payment of first fruits and tenths, or from the payment of all dues of what kind soever to the bishop or other ordinary who before the making of that Act had lawful right to claim the same, or from canonical obedience to the bishop or ordinary of the said diocese, but such professor should be obliged to make payment thereof:

And whereas it has been found that by reason of the duties belonging to his office of professor the said regius professor is unable to celebrate divine service and to perform in person the other parochial duties relating to the cure of souls within the said rectory, and it is expedient that the said regius professor should devote himself entirely to the duties of his office of professor, and that divine service should be celebrated and all other parochial duties performed within the said rectory by some person appointed for that purpose with permanence of tenure:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all purposes as the Somersham Rectory Act, 1882.

2. This Act shall commence and take effect from and after the time of the next and first avoidance of the office or place (in this Act called the office) of regius professor or reader of divinity in the University of Cambridge (in this Act called regius professor) which shall happen after the passing of this Act, or from and after any earlier time at which the person holding at the time of the passing of this Act the office of regius professor shall, by writing under his hand addressed and sent to the chancellor, masters, and scholars of the University of Cambridge (in this Act called the chancellor, masters, and scholars), and also to the bishop or ordinary of the diocese, resign the Rectory of Somersham, in the county of Huntingdon; and the person so holding the office of regius professor is by this Act authorised to resign the same rectory accordingly without resigning the office of regius professor.

3. Immediately after the commencement of this Act the Rectory of Somersham (in this Act called the rectory), together with Colne and Pidley, and other chapelries, rights,

members; and appurtenances, in the county of Huntingdon, and all members, tithes, lands, tenements, hereditaments, profits, and emoluments whatsoever belonging or in anywise appertaining to that rectory or with the same used or enjoyed (all of which are in this Act included under the expression the rectory), shall be severed and for ever disannexed from the office of regius professor; and the person who shall after the commencement of this Act be the regius professor for the time being shall no longer by virtue of his office have or hold the rectory or become the incumbent thereof.

4. After the commencement of this Act the rectory and all the estate and interest therein which the regius professor as rector thereof or his successors has or had, or would have had therein if this Act had not been passed, shall, without any conveyance thereof or any assurance in law other than the provisions of this Act, forthwith become and be vested in the chancellor, masters, and scholars for ever for the purposes and subject to the provisions of this Act, and the chancellor, masters, and scholars shall for ever thenceforth receive all the tithes, rents, profits, and emoluments payable in respect of the rectory to the rector thereof for the time being.

5. After the commencement of this Act the chancellor, masters, and scholars shall, for the purpose of enforcing payment of all tithes, rents, profits, and emoluments of the rectory, and of obtaining possession of all tithes, lands, tenements, and other hereditaments becoming vested in them under this Act, and of recovering the rents and profits thereof, have and enjoy all rights, powers, and remedies at law and in equity of a rector of the rectory duly presented and instituted or collated and inducted thereto.

6. After the commencement of this Act neither the regius professor for the time being nor the chancellor, masters, and scholars shall be required, nor shall it be lawful for him or them by virtue of the office of regius professor or of rector of the rectory, to celebrate divine service or perform any other parochial duties relating to the cure of souls within the rectory, or to appoint any curate or curates for such purposes or any of them, and neither the regius professor for the time being nor the chancellor, masters, and scholars shall owe any canonical obedience to the bishop or ordinary of the diocese within which the rectory is or may be situated.

7. After the commencement of this Act there shall by virtue of this Act be constituted

a vicarage of Somersham (in this Act called the vicarage), and for the purpose of celebrating divine service and performing all other parochial duties relating to the cure of souls within the rectory there shall be appointed a duly qualified clerk to be the vicar of Somersham (in this Act called the vicar), who shall celebrate divine service and perform all other parochial duties relating to the cure of souls within the rectory which the regius professor as rector of the rectory, or the curate or curates appointed by him, has or have usually done or performed, or was or were by law obliged to do or perform, and the vicar shall owe canonical obedience to the bishop or ordinary of the diocese within which the rectory is or may be situated.

8. The perpetual advowson, donation, free disposition, and right of patronage of the vicarage shall be and the same is by this Act vested in the bishop or ordinary of the diocese, who shall from time to time collate some fit and proper person to the vicarage.

9. After the commencement of this Act the chancellor, masters, and scholars shall out of the tithes, rents, profits, and emoluments of the rectory pay all expenses, charges, and other outgoings, including the costs of repairing the chancel of the parish church of Somersham and of the two churches in Colne and Pidley, at any time before the passing of this Act paid by the regius professor as rector, other than the salaries or stipends of any curates appointed for the celebration of divine service and the performance of other parochial duties relating to the cure of souls within the rectory, and shall divide the net annual surplus of such tithes, rents, profits, and emoluments, after payment thereof of all such outgoings as aforesaid, into twenty equal parts, and shall pay ten of such parts to the regius professor for the time being, and shall pay the remaining ten of such parts to the vicar for the time being for the benefit of himself and of his two curates as herein-after provided.

10. The vicar shall appoint and constantly provide at least two learned and able curates (to be duly licensed by the bishop or ordinary of the diocese), who shall be resident within the rectory, to assist him in the celebration of divine service, and the performance of all other parochial duties relating to the cure of souls within the rectory, and the vicar shall in every year, out of the income represented by the ten parts to be paid to him as by this Act provided of the said annual surplus, pay and apply three of such parts to the curate assigned to Pidley and two other such parts to the curate assigned to Colne.

11. The vicar shall by virtue of his office of vicar have, hold, occupy, and enjoy for his own use, so long as he continues vicar, the rectory house at Somersham, and the garden and ground belonging thereto and usually occupied therewith.

12. Every vicar of Somersham shall have all such claims, rights, remedies, and powers of recovery against the rector or vicar his predecessor, or against the representatives of the rector or vicar his predecessor, in respect of dilapidations to the rectory house, garden, and ground as would have belonged to or been possessed by the person succeeding to the office of regius professor against his predecessor in that office, or against the representatives of such predecessor, if this Act had not been passed.

13. All first fruits and other dues which before the passing of this Act have been payable in respect of the rectory upon the appoint-

ment of any person to the office of regius professor shall after the commencement of this Act become due and be payable upon the collation of a vicar to the vicarage, and first fruits or other dues shall no longer become due or be payable in respect of the rectory upon the appointment of any person to the office of regius professor.

14. The chancellor, masters, and scholars shall out of the tithes, rents, profits, and emoluments received by them as rectors of the rectory pay all first fruits and tenths, and payments so made shall be outgoings within the meaning of this Act payable before the division by this Act directed to be made of the net annual surplus of the tithes, rents, profits, and emoluments of the rectory.

15. All costs of or incident to preparing, obtaining, and passing this Act shall be paid the chancellor, masters, and scholars.

CHAP. 82.

Lunacy Regulation Amendment Act, 1882.

ABSTRACT OF THE ENACTMENTS.

1. *Short title of Act.*
2. *Construction of Act.*
3. *Power of Lord Chancellor where property of lunatic does not exceed 2,000*l.*, or 100*l.* per annum.*
4. *All Chancery lunatics to be visited twice a year.*

An Act for amending the Lunacy Regulation Acts. (18th August 1882.)

WHEREAS it is expedient to amend the Lunacy Regulation Acts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited for all other purposes as the Lunacy Regulation Amendment Act, 1882.

2. This Act shall be construed as one with the Lunacy Regulation Acts, 1853 and 1862, and unless there is something in the subject matter or context repugnant to such construc-

tion, the expression "The Lord Chancellor intrusted as aforesaid," and all other expressions having a special or defined meaning in the last-mentioned Acts, or either of them, shall have the same meaning in this Act.

3. Section twelve of the Lunacy Regulation Act, 1862, is hereby amended so as to have effect as if the words "two thousand pounds in value" had been inserted therein instead of the words "one thousand pounds in value" and the words "one hundred pounds per annum" instead of "fifty pounds per annum."

4. Whereas by section twenty of the Lunacy Regulation Act, 1862, it is enacted that "every lunatic shall be personally visited and " seen by one of the said visitors four times at " least in every year, and such visits shall be

" so regulated as that the interval between
" successive visits to any such lunatic shall
" in no case exceed four months: Provided
" always, that lunatics who are resident in
" licensed houses, asylums, or registered hos-
" pitals shall not necessarily be visited by any
" of the said visitors more than once in the
" year, unless the Lord Chancellor intrusted
" as aforesaid shall otherwise direct;": Be it
enacted, that the said section shall be con-

strued as if the word "twice" had been
inserted therein instead of the words "four
times," and as if the words "eight months"
had been inserted therein instead of the words
"four months," and as if instead of the proviso
therein there had been inserted the following
words: Provided always, that every lunatic
resident in a private house, shall, during the
two years next following inquisition, be so
visited at least four times in every year.

LONDON: Printed by GEORGE E. B. EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1882.

A T A B L E

OF

All the STATUTES passed in the Third Session of the Twenty-second Parliament of the United Kingdom of Great Britain and Ireland.

45 & 46 VICTORIA, 1882.

PUBLIC GENERAL ACTS.

1. An Act to apply the sum of Three hundred and thirteen thousand two hundred and seventy pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-two - Page 3
2. An Act to authorise the use of Reply Post Cards - - - - - 4
3. An Act to amend the Law relating to the use of Gunpowder in Slate Mines - - - 4
4. An Act to apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March one thousand eight hundred and eighty-one, one thousand eight hundred and eighty-two, and one thousand eight hundred and eighty-three - - - - - 5
5. An Act to enable Her Majesty to provide for the Establishment of His Royal Highness the Duke of Albany and Her Serene Highness Princess Helen Frederica Augusta of Waldeck and Pyrmont, and to settle an Annuity on Her Serene Highness - - - 6
6. An Act to amend the law in regard to householders under the General Police and Improvement Acts in Scotland - - - 7
7. An Act to provide, during twelve months, for the Discipline and Regulation of the Army - - - - - 7
8. An Act to apply the sum of nine million two hundred and eighty-two thousand four hundred and thirty-five pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three 10
9. An Act to amend the Documentary Evidence Act, 1868, and other enactments relating to the evidence of documents by means of copies printed by the Government Printers - - - - - Page 10
10. An Act for making provision for facilitating the Manœuvres of Troops to be assembled during the present Summer - - - 11
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14. An Act to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis - - - 26
15. An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common - - - - - 33
16. An Act to amend the Irish Reproductive Loan Fund Act, 1874 - - - - - 35
17. An Act for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto - 37
18. An Act to regulate the procedure of School Boards in Scotland in the dismissal of Teachers - - - - - 38

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26. An Act to amend the Law relating to the Election of Lords Temporal to serve in Parliament for Ireland	60
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28. An Act to apply the sum of five million seven hundred and three thousand eight hundred and ninety-one pounds out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three	62
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40. An Act to amend the Law of Copyright relating to Musical Compositions	113
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45. An Act to make provision for the transfer of the Assets and Liabilities of the Provident Branch of the Bombay Civil Fund and other funds to the Secretary of State for India in Council	123
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53. An Act to amend the Law of Entail in Scotland	247
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56. An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland Page 263
 57. An Act to amend the law relating to Costs and Salaries in County Courts - - - 277
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 59. An Act to reorganise the Educational Endowments of Scotland - - - 280
 60. An Act to amend and extend the provisions of the Land Law (Ireland) Act, 1881, relating to Labourers Cottages and Allotments - - - 288
 61. An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes - - - 289
 62. An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland and the Irish Land Commission; and for other purposes relating to Loans by those Commissioners - - - 310
 63. An Act to amend the Acts regulating the pay of certain officers of the Royal Irish Constabulary Force, and for other purposes connected therewith - - - 314
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 65. An Act to make provision respecting certain Prison Charities - - - 319
 66. An Act to amend the Law relating to Licences to retail Intoxicating Liquors on Passenger Vessels in Scotland - - - 320
 67. An Act to further amend the Law relating to Turnpike Roads in South Wales - - - 321
 68. An Act to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs - - - 322
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 71. An Act to apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March one thousand eight hundred and eighty-three, and to appropriate the Supplies granted in this Session of Parliament - - - 325
 72. An Act for amending the Laws relating to Customs and Inland Revenue, and Postage and other Stamps, and for making further provision respecting the National Debt and charges payable out of the public revenue or by the Commissioners for the reduction of the National Debt; and for other purposes 341
 73. An Act for the better protection of Ancient Monuments - - - Page 351
 74. An Act to amend the Post Office Acts with respect to the Conveyance of Parcels - - - 357
 75. An Act to consolidate and amend the Acts relating to the Property of Married Women - - - 365
 76. An Act to amend the Merchant Shipping Acts, 1854 to 1880, with respect to Colonial Courts of Inquiry - - - 371
 77. An Act to amend the Law of Citation in Scotland - - - 373
 78. An Act to establish a Fishery Board for Scotland - - - 375
 79. An Act to make provision for the arrangement of Accounts between the Commissioners of Her Majesty's Treasury and the Secretary of State in Council of India in respect of certain Home Charges for Her Majesty's Forces serving in India - - - 377
 80. An Act for the extension of Allotments - - - 378
 81. An Act for disannexing the Rectory of Somersham from the office of Regius Professor of Divinity in the University of Cambridge, and for making better provision for the cure of Souls within the said Rectory; and for other purposes - - - 382
 82. An Act for amending the Lunacy Regulation Acts - - - 385
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- The Acts contained in the following List, being PUBLIC ACTS of a Local Character, are placed amongst the LOCAL AND PERSONAL ACTS.
- i. An Act to confirm a Provisional Order made by the Board of Trade under the Merchant Shipping Act Amendment Act, 1862, relating to the pilotage of the River Tees.
 - iii. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same relating to Cahermone District.
 - iv. An Act to confirm Schemes under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating respectively to Acton Commons, Chiswick and Turnham Green Commons, and Tottenham Commons.
 - xxvi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Kent.

- xxvii. An Act to confirm the Provisional Orders for the regulation of certain lands known as Crosby Garrett Common, in the parish of Crosby Garrett, in the county of Westmoreland; and for the regulation of certain lands known as Stivichall Common, in the parish of St. Michael, Coventry, in the county of Warwick.
- xxviii. An Act to confirm the Provisional Order for the inclosure of certain lands known as Arkleside Common, situate in the Parish of Coverham, in the North Riding of Yorkshire, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- xxix. An Act to confirm the Provisional Order for the inclosure of certain lands known as Bettws Diasserth Common, situate in the Parish of Bettws Disserth, in the County of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- xxx. An Act to confirm the Provisional Order for the inclosure of certain lands known as Cefn Drawen Common, situate in the Parish of Glasgwm, in the County of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- xxxi. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to the Bangor Gas Undertaking.
- xxxii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballymena, Clonmel, Fermoy, and Letterkenny.
- xxxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and County of Bristol, the Local Government District of Bromley, the Port of Cardiff, the Rural Sanitary District of the Glendale Union, the Borough of Hastings, the Local Government District of Merthyr Tydfil, the Boroughs of Newport (Monmouthshire) and Portsmouth, the Local Government District of Sandal Magna, and the Rural Sanitary District of the Ware Union.
- xxxiv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the Parishes of Barmbrough, Burghwallis, Coleshill, Conisbrough, Forrest Hill, Hickleton, Inglesham, Kirk Bramwith, Kirk Sandall and Trumfleet, Shotover, and Shotover Hill Place, and to the Townships of Adwick-le-Street, Askern, Barnby-upon-Don or Barnby Dunn, Campsall, Dalton, Ecclesfield, Helmington Row, Langthwaite-with-Tilts, Mexbrough, Moss, Owston, Thorpe-in-Balne, and Willington.
- lviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Eyemouth, Greenock, and Rothesay.
- lix. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875, relating to the Borough of Nottingham.
- lx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and Borough of Bath, the Local Government District of Brierley Hill, the Borough of Burton-upon-Trent, the Rural Sanitary District of the Keighley Union, the Boroughs of Margate, Newbury, and Preston, the Town of Ramsgate, the Borough of Saint Helens, and the Rural Sanitary District of the Settle Union.
- lxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Birmingham (two), the Local Government Districts of Gainsborough, Smethwick, and South Blyth, the Borough of Stafford, the Staines Joint Hospital District, the Improvement Act District of Surbiton, the Uxbridge Joint Hospital District, the Local Government District of Watford, and the Borough of Wigan.
- lxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Billericay Union, the City and County of Bristol, the Local Government District of Compton Gifford, the Rural Sanitary District of the Farnham Union, the Local Government Districts of Hendon and Madron, the Borough of Nottingham, the Local Government Districts of Rusholme and Torquay, the Borough of Walsall, the Improvement Act District of West Bromwich, and the Local Government District of Worthing.
- lxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Ashton-under-Lyne, the Improvement Act District of Bethesda, the Local Government District of Heckmondwike, the Borough of Lewes, the Improvement Act District of Lytham, the Local Government District of Pemberton, the Borough of Rochdale, and the Local Government District of Sowerby Bridge.

- lxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Ealing, Edmonton, and Crompton, the Ports of Newcastle, North Shields, and South Shields, the Port of Plymouth, and the Local Government Districts of West Cowes and Woodford.
- lxv. An Act to confirm Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballina and Lurgan.
- lxvi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the City of Dublin and the Poor Law Union of Ballymoney.
- lxvii. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Fenstanton Improvements, situate in the parish of Fenstanton, in the county of Huntingdon.
- lxviii. An Act to extend the Artillery Ranges Act, 1862.
- lxix. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Ryde.
- lxx. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Great Yarmouth Tramways, Highgate Hill Tramways, Isle of Axholme and Marshland Tramways, North Shields and District Tramways Extension, Pontypridd and Rhondda Valley Tramways, Staffordshire Tramways (Extension), Sunderland Tramways (Extension), and Weston-super-Mare Tramways.
- lxxi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to Banbridge, Ennis, Larne, and Londonderry.
- lxxii. An Act to confirm a Provisional Order of One of Her Majesty's Principal Secretaries of State for providing that the Roads and Bridges (Scotland) Act, 1878, shall come into force in the county of Edinburgh on the 1st day of September 1882 subject to certain conditions.
- xcvii. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Salford.
- xcviii. An Act to confirm a Provisional Order of the Local Government Board relating to the Local Government District of Workington.
- xcix. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Brecon Gas, High Wycombe Gas, Kettering Gas, Portsea Gas, Redditch Gas, Salisbury Gas, and Sheffield Gas.
- c. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Calne Water, Cromer Water, Denbigh Water, and Kenilworth Water.
- ci. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Birmingham and Suburban Tramways, Birmingham and Western Districts Tramways, Manchester, Bury, and Rochdale Tramways (Extensions), and Walsall and District Tramways.
- cii. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for West Ham (Essex) and Terrington St. John (Norfolk) to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- ciii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act Districts of Fleetwood and Rhyl and the City of York.
- ccxxviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Aldershot and Farnborough Tramways Amendment, Birkdale and Southport Tramways (Use of Mechanical Power), Bristol Tramways (Extensions), Burnley and District Tramways Extension, Leamington and Warwick Tramways, Manchester Carriage and Tramways Company, North Staffordshire Tramways, and Oldham Borough Tramways (Extensions).
- ccxxix. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for Finchley, Llanarth, and Upper Dylais to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- cxl. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Queenstown.
- cxli. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

clxviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Bridlington, Broadstairs, Carnlough, Holywood, Johnshaven, Kettletoft, Penmaenmawr, Plymouth, Seabrook, Southend, Stonehaven, Weymouth, and Worthing (West).

clxix. An Act to confirm a Provisional Order of the Local Government Board under the Provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health

Act, 1875, relating to the Local Government District of Upper Sedgley.

clxx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Bury (two), the Godalming Main Sewerage District, and the Local Government Districts of Marsden and Northwich.

ccxxi. An Act to amend the Limerick Harbour (Composition of Debt) Act, 1867, in relation to Wellesley Bridge.

LIST OF THE LOCAL AND PRIVATE ACTS.

LOCAL ACTS.

The Titles to which the Letter P. is prefixed are Public Acts of a Local Character.

P. i. An Act to confirm a Provisional Order made by the Board of Trade under the Merchant Shipping Act Amendment Act, 1862, relating to the pilotage of the River Tees.

ii. An Act to enable the London and Saint Katharine Docks Company to raise further Money and to maintain their Railway from the North Woolwich Branch of the Great Eastern Railway to Galleons Reach and for other purposes.

P. iii. An Act to confirm a Provisional Order under the Drainage and Improvement of Lands (Ireland) Act, 1863, and the Acts amending the same relating to Cahermone District.

P. iv. An Act to confirm Schemes under the Metropolitan Commons Act, 1866, and the Metropolitan Commons Amendment Act, 1869, relating respectively to Acton Commons, Chiswick and Turnham Green Commons, and Tottenham Commons.

v. An Act to enable the London Brighton and South Coast Railway Company to raise further Capital.

vi. An Act for granting further powers to the Maidstone Waterworks Company.

vii. An Act for enabling the Caledonian Railway Company to raise additional Money.

viii. An Act to revive the powers and extend the period for the compulsory purchase of

lands and to extend the period for the completion of the Works authorised by the Bristol Port and Channel Dock Act 1877 and for other purposes.

ix. An Act for enabling the mayor and commonalty and citizens of the City of London to take lands with a view to the enlargement and improvement of the court house of the City of London Court and for other purposes.

x. An Act to authorise the sale of the existing Church of Saint Philip in the City of Liverpool and of the site thereof and purchase of a site for and the erection of a new church and to provide for the appointment of Trustees and other relative matters.

xi. An Act to transfer to the Local Board for the District of Fulwood in the County Palatine of Lancaster the Powers conferred by the Lancashire County Justices Act 1880 for constructing Waterworks and supplying Water to the Whittingham County Lunatic Asylum, and to authorise the Local Board to supply Water within their District and other Places, and to make further provisions in that behalf.

xii. An Act to confer further powers on the Abbotsbury Railway Company; to revive the powers and extend the period for the compulsory purchase of lands; for the construction of portions of the railway authorised by the Abbotsbury Railway Act, 1877:

- for making a diversion of part of their authorised line; and for other purposes.
- xiii. An Act to amend the Constitution of King's College London and for other purposes relating thereto.
- xiv. An Act to continue the Liability of the borough of Birkenhead to contribute to the Expenses of the Local Authority of the county of Chester under the Contagious Diseases (Animals) Acts in the event of a grant of a separate Court of Quarter Sessions to the said borough.
- xv. An Act to authorise the Limavady and Dungiven Railway Company to acquire additional lands to confirm an agreement with the Skinners' Company to attach a preference to certain shares to authorise the Belfast and Northern Counties Railway Company to subscribe and lend further sums and to raise further capital and for other purposes.
- xvi. An Act to further extend the Time for the Completion of the Merionethshire Railway.
- xvii. An Act to consolidate and convert certain of the Shares and Stocks in the Capital of the Great North of Scotland Railway Company; and for other purposes.
- xviii. An Act to confer further powers on the Great North of Scotland Railway Company.
- xix. An Act to confer further powers on the Lord Provost, magistrates and council of the city and royal burgh of Glasgow; and for other purposes.
- xx. An Act to confer further powers on the Teign Valley Railway Company; and for other purposes.
- xxi. An Act for vesting the bridge at Sawley across the River Trent in the counties of Derby and Leicester commonly known as Harrington Bridge in the Trustees of the bridge at Shardlow across the said river in the said counties commonly known as Cavendish Bridge and for suspending the taking of toll upon the same and for other purposes.
- xxii. An Act for enabling the North-eastern Railway Company to construct a Railway from Alnwick to Cornhill in the county of Northumberland; and for other purposes.
- xxiii. An Act for enlarging the Powers of the Corporation of the Borough of Alnwick and for vesting in the Corporation the Forest of Aydon otherwise Haydon or Alnwick Moor in the county of Northumberland and for other purposes.
- xxiv. An Act for incorporating the Horncastle Water Company, and for better supplying with Water the Town of Horncastle, in the county of Lincoln, and the several places adjacent thereto; and for other purposes.
- xxv. An Act to extend the objects of the Agricultural Company of Mauritius, Limited, and its powers for the transaction of its business and investment of its moneys.
- P. xxvi. An Act to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878, relating to the county of Kent.
- P. xxvii. An Act to confirm the Provisional Orders for the regulation of certain lands known as Crosby Garrett Common, in the parish of Crosby Garrett, in the county of Westmoreland; and for the regulation of certain lands known as Stivichall Common, in the parish of St. Michael, Coventry, in the county of Warwick.
- P. xxviii. An Act to confirm the Provisional Order for the inclosure of certain lands known as Arkleside Common, situate in the Parish of Coverham, in the North Riding of Yorkshire, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. xxix. An Act to confirm the Provisional Order for the inclosure of certain lands known as Bettws Dissorth Common, situate in the Parish of Bettws Dissorth, in the county of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. xxx. An Act to confirm the Provisional Order for the inclosure of certain lands known as Cefn Drawen Common, situate in the Parish of Glaswrm, in the county of Radnor, in pursuance of a Report of the Inclosure Commissioners for England and Wales.
- P. xxxi. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to the Bangor Gas Undertaking.
- P. xxxii. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballymena, Clonmel, Fermoy, and Letterkenny.
- P. xxxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the city and county of Bristol, the Local Government District of Bromley, the Port of Cardiff, the Rural Sanitary District of the Glendale Union, the Borough of Hastings, the Local Government District of Merthyr Tydfil, the Boroughs of Newport (Monmouthshire) and Portsmouth, the Local Government District of Sandal Magna, and the Rural Sanitary District of the Ware Union.

- P. xxxiv. An Act to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876, as amended and extended by the Poor Law Act, 1879, relating to the parishes of Barmbrough, Burghwallis, Colleshill, Conisbrough, Forrest Hill, Hickleton, Inglesham, Kirk Bramwith, Kirk Sandall and Trumflect, Shotover, and Shotover Hill Place, and to the Townships of Adwick-le-Street, Askern, Barnby-upon-Don or Barnby Dunn, Campsall, Dalton, Ecclesfield, Helmington Row, Langthwaite-with-Tilts, Mexbrough, Moss, Owston, Thorpe-in-Balne, and Willington.
- xxxv. An Act for conferring further powers on the Glasgow and South-western Railway Company for the construction of works the acquisition of lands and the raising of money and for other purposes.
- xxxvi. An Act for conferring further powers on the Millwall Dock Company and for other purposes.
- xxxvii. An Act for enabling the Local Board for the district of West Ham, in the county of Essex, to require payment of fees by persons constructing or altering buildings within their district, and extending the powers of the Board as to making byelaws with respect to pollution of water in dwelling-houses and factories, and as to ventilating and protecting dwellings from fire, and for other purposes.
- xxxviii. An Act to authorise the South Metropolitan Gas Company to purchase additional lands construct additional works enlarge their borrowing powers and amend their Acts.
- xxxix. An Act for providing for the Transfer of the Harbour of Portsoy by the Earl of Seafield for constructing new Harbour Works and for providing for the application of Alexander Rainy's Bequest towards the said Harbour and for other purposes.
- xl. An Act for incorporating and conferring powers on the Bromsgrove Gas Company and for other purposes.
- xli. An Act for the abandonment of the Welshpool and Llanfair Railway the repayment of the money deposited for securing its completion and the dissolution of the Welshpool and Llanfair Railway Company.
- xlii. An Act for extending and amending the Constitution of the High School of Dundee; authorising the establishment, within the burgh of Dundee, of an additional Public School, under the management of the School Board of Dundee; and for confirming an agreement between William Harris, Esquire, the High School Corporation and the School Board; and for other purposes.
- xliii. An Act for enabling the Dundee Water Commissioners to construct additional Works, and to create and issue Debenture Stock; and for other purposes.
- xliv. An Act for authorising the Callander and Oban Railway Company to raise additional capital; and for other purposes.
- xlv. An Act for extending the limits of supply of the South Essex Waterworks Company and for authorising that Company to construct further works and to raise further money and for other purposes.
- xlvi. An Act to authorise the Lower Thames Valley Main Sewerage Board to defray expenses incurred by them in relation to the promotion of a certain Bill in Parliament in the session of 1879.
- xlvii. An Act to enable the Dublin Wicklow and Wexford Railway Company to construct certain diversion railways of their authorised line and to confer further powers on the Company with reference to their undertaking and for other purposes.
- xlviii. An Act to enable the Moffat Railway Company to construct a railway to the Beattock Station of the Caledonian Railway Company and for other purposes.
- xlix. An Act to extend the time for the completion of the railway authorised by the Golden Valley Railway (Extension to Hay) Act, 1877; to authorise the Golden Valley Railway Company to issue preference shares and to borrow money for payment of debts.
- i. An Act for enabling the North-eastern Railway Company to make new Railways and for conferring additional powers on the Company in relation to their Undertaking and for vesting in them the Undertaking of the Tees Valley Railway Company; and for other purposes.
- ii. An Act for conferring further powers upon the Ipswich Tramways Company.
- iii. An Act for regulating the capital and making further provision for the management of the North British and Mercantile Insurance Company.
- liii. An Act for enabling the Caledonian Railway Company to make railways and other works, and abandon authorised and existing works, in and near the city of Glasgow, to divert a road at Lochmaben, and to acquire lands and works in the counties of Stirling, Perth, and Renfrew; and for other purposes.
- liv. An Act to constitute and incorporate Commissioners for the management of Blyth

Harbour in the county of Northumberland and to vest the harbour undertaking in them and empower them to construct additional works; and for other purposes.

lv. An Act for authorising the Corporation of the city of Liverpool to execute certain street improvements and to acquire and appropriate land for the University College Liverpool; for amending various Local Acts in force in the city; and for conferring on the Corporation further powers in relation to the grant of superannuation allowances to their officers and other matters.

lvi. An Act to confer various powers on the the Metropolitan Board of Works and to amend certain Acts relating to that Board.

lvii. An Act to authorise the Trustees of the Liverpool Bishopric Endowment Fund to acquire the Advowson of the Vicarage of Walton-on-the-Hill in the county of Lancaster and for other purposes.

P. lviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Eyemouth, Greenock, and Rothesay.

P. lix. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875, relating to the Borough of Nottingham.

P. lx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the City and Borough of Bath, the Local Government District of Brierley Hill, the Borough of Burton-upon-Trent, the Rural Sanitary District of the Keighley Union, the Boroughs of Margate, Newbury, and Preston, the Town of Ramsgate, the Borough of Saint Helens, and the Rural Sanitary District of the Settle Union.

P. lxi. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Birmingham (two), the Local Government Districts of Gainsborough, Smethwick, and South Blyth, the Borough of Stafford, the Staines Joint Hospital District, the Improvement Act District of Surbiton, the Uxbridge Joint Hospital District, the Local Government District of Watford, and the Borough of Wigan.

P. lxii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Rural Sanitary District of the Billericay Union, the City and County of Bristol, the Local Government District of Compton Gifford, the Rural Sanitary District

of the Farnham Union, the Local Government Districts of Hendon and Madron, the Borough of Nottingham, the Local Government Districts of Rusholme and Torquay, the Borough of Walsall, the Improvement Act District of West Bromwich, and the Local Government District of Worthing.

P. lxiii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Ashton-under-Lyne, the Improvement Act District of Bethesda, the Local Government District of Heckmondwike, the Borough of Lewes, the Improvement Act District of Lytham, the Local Government District of Pemberton, the Borough of Rochdale, and the Local Government District of Sowerby Bridge.

P. lxiv. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Local Government Districts of Ealing, Edmonton, and Crompton, the Ports of Newcastle, North Shields, and South Shields, the Port of Plymouth, and the Local Government Districts of West Cowes and Woodford.

P. lxv. An Act to confirm Provisional Orders of the Local Government Board for Ireland relating to the towns of Ballina and Lurgan.

P. lxvi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to the City of Dublin and the Poor Law Union of Ballymoney.

P. lxvii. An Act to confirm a Provisional Order under the Land Drainage Act, 1861, relating to Fenstanton Improvements, situate in the parish of Fenstanton, in the county of Huntingdon.

P. lxviii. An Act to extend the Artillery Ranges Act, 1862.

P. lxix. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Ryde.

P. lxx. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Great Yarmouth Tramways, Highgate Hill Tramways, Isle of Axholme and Marshland Tramways, North Shields and District Tramways Extension, Pontypridd and Rhondda Valley Tramways, Staffordshire Tramways (Extension), Sunderland Tramways (Extension), and Weston-super-Mare Tramways.

P. lxxi. An Act to confirm certain Provisional Orders of the Local Government Board for Ireland relating to Banbridge, Ennis, Larne, and Londonderry.

- P. lxxii. An Act to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for providing that the Roads and Bridges (Scotland) Act, 1878, shall come into force in the county of Edinburgh on the 1st day of September 1882 subject to certain conditions.
- lxxiii. An Act for shortening and improving the Railway Route from the authorised Forth Bridge Railway at Inverkeithing to the Edinburgh Perth and Dundee Railway near the Bridge of Earn Station; to transfer to the North British Railway Company the powers of the Forth Bridge Railway Company for making a Railway to Burntisland; to authorise an abandonment of part of that Railway and of another Railway and an extension of time for the compulsory purchase of land and completion of works; and for other purposes.
- lxxiv. An Act to extend the Powers of the Northampton Waterworks Company.
- lxxv. An Act to consolidate and amend the Constitution and Articles and Regulations of the Scottish Widows' Fund and Life Assurance Society; to confer further powers on that Society; and for other purposes.
- lxxvi. An Act to authorise the Belfast and Northern Counties Railway Company to construct railways in substitution for portions of those authorised by the Belfast and Northern Counties Railway Act 1881; to abandon so much of the railways authorised by that Act as will be rendered unnecessary by reason of the construction of the substituted railways; to raise further capital; and for other purposes.
- lxxvii. An Act for making a railway to connect the Belfast and Northern Counties Railway with the Harbour of Carrickfergus; and for other purposes.
- lxxviii. An Act to amend the Newhaven Harbour Improvement Act 1878.
- lxxix. An Act to enable the Londonderry and Lough Swilly Railway Company to raise additional capital to confer further powers upon them in reference to their undertaking and for other purposes.
- lxxx. An Act to amend the law with respect to the rates to be levied within the ancient limits of the City of Bristol and the liberties thereof; and for other purposes.
- lxxxi. An Act for incorporating the Stroud Water Company and for conferring powers on that Company and for other purposes.
- lxxxii. An Act to amend the Acts relating to the Court Houses in the City of Glasgow.
- lxxxiii. An Act for incorporating and conferring powers on the Northwich Gas Company.
- lxxxiv. An Act for reviving and rendering valid certain Letters Patent, granted to Francis Boyce Lecky and William Hugh Smyth for Improvements in the manufacture of soles, and in the machinery or apparatus employed therefor.
- lxxxv. An Act to extend the time for the completion of the railway authorised by the West Lancashire Railway Act 1871 and for other purposes.
- lxxxvi. An Act to re-incorporate with further powers the Rugby Gaslight and Coke Company Limited.
- lxxxvii. An Act to authorise the Commissioners of the Glasgow Corporation Waterworks to construct an additional Service Reservoir and other Works; and for other purposes.
- lxxxviii. An Act for empowering the London and North-western Railway Company, to construct a new Railway at Ordsall Lane in Manchester and for other purposes.
- lxxxix. An Act to authorise the construction of Street Tramways between Shoreham and Hove in the county of Sussex; and for other purposes.
- xc. An Act to authorise the East and West India Dock Company to extend their Dock system by constructing and maintaining a new Dock and other Works in connexion therewith in the parishes of Grays Thurrock, Little Thurrock, and Chadwell, all in the County of Essex.
- xc. An Act to enable the Edinburgh Street Tramways Company to make and maintain additional Tramways and to confer other powers upon the said Company.
- xcii. An Act to authorise the Liverpool United Tramways and Omnibus Company to construct new Tramways and to confer further powers on them with reference to other Tramways in the neighbourhood of Liverpool; and for other purposes.
- xciii. An Act to confer further Powers on the London Brighton and South Coast Railway Company and for other purposes.
- xciv. An Act to authorise the Metropolitan Railway Company to purchase certain Lands in the Parishes of Hammersmith and Kensington to make further Provision with reference to the completion of the Inner Circle Railway to vest outstanding Shares in the Metropolitan and Saint John's Wood Company in the Company to raise additional capital and for other purposes.

- xcv. An Act to enable the Liverpool United Gaslight Company to purchase additional land and to erect gasworks thereon; to raise further money; and for other purposes.
- x cvi. An Act for conferring additional powers upon the Exmouth Gas Company; and for other purposes.
- P. xc vii. An Act to confirm a Provisional Order of the Local Government Board relating to the Borough of Salford.
- P. xc viii. An Act to confirm a Provisional Order of the Local Government Board relating to the Local Government District of Workington.
- P. xc ix. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Brecon Gas, High Wycombe Gas, Kettering Gas, Portsea Gas, Redditch Gas, Salisbury Gas, and Sheffield Gas.
- P. c. An Act to confirm certain Provisional Orders made by the Board of Trade under the Gas and Water Works Facilities Act, 1870, relating to Calne Water, Cromer Water, Denbigh Water, and Kenilworth Water.
- P. ci. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Birmingham and Aston Tramways, Birmingham and Suburban Tramways, Birmingham and Western Districts Tramways, Manchester, Bury, and Rochdale Tramways (Extensions), and Walsall and District Tramways.
- P. c ii. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for West Ham (Essex) and Terrington St. John (Norfolk) to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- P. c iii. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Improvement Act Districts of Fleetwood and Rhyl and the City of York.
- c iv. An Act for empowering the Mayor and Commonalty and Citizens of the City of London to convert their authorised London Central Fruit Vegetable and Flower Market into an Inland Fish Market and to continue Farringdon Market and for other purposes.
- c v. An Act to enable the Tottenham and Edmonton Gas Light and Coke Company to acquire lands for purposes of their undertaking to raise Additional Capital and for other purposes.
- c vi. An Act for conferring powers on the Milford Docks Company for raising additional capital and to extend the time for completion of their Undertaking and for other purposes.
- c vii. An Act for incorporating the Newquay and District Water Company and for conferring powers on that Company and for other purposes.
- c viii. An Act to authorise the Seacombe Hoylake and Dee Side Railway Company to extend their Railway to New Brighton and for other purposes.
- c ix. An Act to empower the Local Board for the District of Padiham and Hapton in the County of Lancaster to construct and maintain additional Waterworks and for other purposes.
- c x. An Act to authorise the Northampton Street Tramways Company to construct additional Tramways; to abandon parts of their authorised Tramways; and for other purposes.
- c xi. An Act to authorise the Liskeard and Caradon Railway Company to make certain Railways and Works for the improvement and extension of their existing Railway and for other purposes.
- c xii. An Act for empowering the Mayor Aldermen and Burgesses of the Borough of Carnarvon to acquire Morfa Seiont Common in the Borough and to lay out a public park and for other purposes.
- c xiii. An Act to revive and extend the powers of the Greenwich and Millwall Subway Company.
- c xiv. An Act to enable the Forth Bridge Railway Company to construct a substituted Railway across the Firth of Forth to amend the Acts relating to the Company and for other purposes.
- c xv. An Act for extending the boundaries of the borough of Kingston-upon-Hull for consolidating and amending various provisions of the Local Acts in force within the borough and for other purposes.
- c xvi. An Act for conferring additional Powers on the Manchester Sheffield and Lincolnshire Railway Company and on the Cheshire Lines Committee and for other purposes.
- c xvii. An Act to confirm an arrangement for the settlement of disputed claims between the Local Board for the district of Oswaldtwistle and certain persons with respect to moneys paid to and fraudulently appropriated by a former Clerk to the Board and to provide for carrying such arrangement into effect.

- cxviii. An Act to empower the Mayor Aldermen and Burgesses of the Borough of Accrington to make Tramways in and near the borough and for other purposes.
- cxix. An Act for conferring further powers on the Westgate and Birchington Gas Company for the purchase of land the construction of works the raising of money and otherwise in relation to their undertaking.
- cxx. An Act for empowering the Coventry and District Tramways Company to construct an additional Tramway in the city of Coventry and to deviate in constructing a part of their authorised Tramways to extend the time for constructing their undertaking; and for other purposes.
- cxxi. An Act for the abandonment of the Cheadle Railway.
- cxxii. An Act for incorporating and conferring powers on the Rothwell Gaslight Company.
- cxxiii. An Act to authorise the Bury and Tottington District Railway Company to raise additional Capital.
- cxxiv. An Act to authorise the Highland Railway Company to construct a railway from Keith to Buckie; and for other purposes.
- cxxv. An Act to confer further powers on the Maidstone and Ashford Railway Company; and for other purposes.
- cxxvi. An Act to authorise the construction of a Railway from the Great North of Scotland Railway at Portsoy to Elgin; and for other purposes.
- cxxvii. An Act for the granting of further Powers to the Oxford Gas Light and Coke Company.
- cxxviii. An Act to confer further powers upon the Swansea Improvements and Tramways Company with respect to their Tramway Undertaking; and for other purposes.
- cxxix. An Act for conferring further powers upon the London and North-western Railway Company in connexion with their own undertaking and upon that Company and the Lancashire and Yorkshire Railway Company and the Great Western Railway Company in respect of other undertakings in which they are jointly interested; and for other purposes.
- cxxx. An Act for conferring additional powers upon the Midland Railway Company for the construction of railways and other works and the acquisition of lands; for vesting in the Company the undertaking of the Evesham and Redditch Railway Company; for raising further Capital; and for other purposes.
- cxxxi. An Act to vary and amend the provisions of the South Staffordshire Mines Drainage Acts 1873 and 1878.
- cxxxii. An Act to authorise the Cranbrook and Paddock Wood Railway Company to extend their Railway to Hawkhurst in the county of Kent; to raise further Money; and for other purposes.
- cxxxiii. An Act to enable the Trustees of the Port Harbour and Town of Whitehaven to raise a further sum of money for the purposes of their harbour and dock.
- cxxxiv. An Act to enable the Edinburgh Street Tramways Company to use steam or other mechanical power on their tramways and to confer other powers upon the said Company.
- cxxxv. An Act to confer further powers on the Taff Vale Railway Company with reference to the construction of new and authorised railways the acquisition of lands and the raising of capital and for other purposes.
- cxxxvi. An Act for empowering the North Metropolitan Tramways Company to extend their tramways along the Green Lanes and for other purposes.
- cxxxvii. An Act for incorporating and conferring powers on the Queenstown Waterworks Company.
- P. cxxxviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the Tramways Act, 1870, relating to Aldershot and Farnborough Tramways Amendment, Birkdale and Southport Tramways (Use of Mechanical Power), Bristol Tramways (Extensions), Burnley and District Tramways Extension, Leamington and Warwick Tramways, Manchester Carriage and Tramways Company, North Staffordshire Tramways, and Oldham Borough Tramways (Extensions).
- P. cxxxix. An Act to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870, to enable the School Boards for Finchley, Llanarth, and Upper Dylais to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.
- P. cxl. An Act to confirm a Provisional Order of the Local Government Board for Ireland relating to Waterworks in the town of Queenstown.
- P. cxli. An Act to confirm a Provisional Order made by the Education Department under the Elementary Education Act, 1870, to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same.

- cxlii. An Act for empowering the Londonderry Port and Harbour Commissioners to construct quays and other works; for conferring further powers on those Commissioners, and for other purposes.
- cxliii. An Act to enable the London Tilbury and Southend Railway Company to construct additional railways and for other purposes.
- cxliv. An Act for the Establishment and Regulation of a Market in South London (near the Elephant and Castle Tavern) in the parish of Saint Mary Newington in the county of Surrey and for other purposes.
- cxlv. An Act for authorising the Gateshead and District Tramways Company to abandon the construction of a portion of their authorised Undertaking and to reduce their Capital for extending the Time for constructing the remainder of their Undertaking; and for other purposes.
- cxlvi. An Act for the establishment and regulation of a Fish Market in the parish of St. Paul Shadwell and borough of Tower Hamlets in the county of Middlesex and the formation of a New Street and the widening and improvement of existing streets and landing stairs near to the market and for other purposes.
- cxlvii. An Act to authorise the Edinburgh Suburban and Southside Junction Railway Company to construct new Railways and to abandon part of their authorised Railways for other purposes.
- cxlviii. An Act for conferring upon the Great Western Railway Company further powers for the construction of New Railways and other works and the taking of lands in the county of Glamorgan; for vesting in the Company the Undertaking of the Torbay and Brixham Railway Company; and for other purposes.
- cxlix. An Act to empower the Mayor, Aldermen, and Burgesses of the town of Saint Helens in the county of Lancaster to make and maintain additional Waterworks and to borrow Money and for other purposes.
- cl. An Act for better supplying with Water Great Driffield and the adjoining district in the East Riding of the county of York.
- cli. An Act for incorporating the Ascot District Gas Company and for other purposes.
- clii. An Act to facilitate the winding-up of the City of Glasgow Bank, to transfer from the Liquidators to a Company the remaining Assets of the Bank; and for other purposes.
- cliii. An Act to authorise the Gravesend Railway Company to extend their Railway in Gravesend to make a Pier or Wharf in connexion therewith and for other purposes.
- cliv. An Act for extending the boundaries of the burgh of Greenock; to increase the number of the Town Council; to alter the constitution of the Board of Police of Greenock, and to confer further powers on that Board with respect to their Gas undertaking; to make further provisions with respect to the the Harbour Trust of Greenock, and the Water Trust of Greenock, and the Municipal Government of the Burgh; and for other purposes.
- clv. An Act to authorise the Lydd Railway Company to extend their railway to Headcorn and New Romney in the county of Kent to raise further money; and for other purposes.
- clvi. An Act to authorise the construction of the Norwood District Tramways in the county of Surrey; and for other purposes.
- clvii. An Act to extend the time for purchasing lands and completing the Metropolitan and District Railways (City Lines and Extensions) and for other purposes.
- clviii. An Act to enable the Trustees for the district and harbour of Maryport to raise a further sum of money for the purposes of their works for the improvement of the harbour of Maryport.
- clix. An Act for making tramways in the county of Devon to be called "the Plymouth " Devonport and District Tramways " and for other purposes.
- clx. An Act for authorising the construction of a railway from the Brent Station of the Great Western Railway Company to Kingsbridge and Salcombe; and for other purposes.
- clxi. An Act for extending the municipal and police boundaries of the city of Edinburgh, including the royal burgh thereof, and for amendment of the Edinburgh Municipal and Police Act, 1879, and application thereof to the districts annexed, and for other purposes.
- clxii. An Act for conferring further powers on the Lancashire and Yorkshire Railway Company with relation to their own undertaking and undertakings in which they are jointly interested and for other purposes.
- clxiii. An Act to authorise the London Street Tramways Company to construct additional tramways and for other purposes.

- clxiv. An Act for conferring further powers on the Southampton Harbour Board with reference to the construction of works the levying of rates and tolls and the raising of money and for other purposes.
- clxv. An Act for incorporating the Todmorden Waterworks Company and for conferring powers on that Company; and for other purposes.
- clxvi. An Act to authorise the Great Eastern Railway Company to construct additional Railways in the counties of Middlesex Hertford and Cambridge; to improve parts of their existing Railways and of the March and Spalding Railway; to construct Tramways at Wisbech and to execute other works and to confer upon them other powers in relation to their undertaking; to authorise a diversion of the Hertford Branch Railway; and for other purposes.
- clxvii. An Act for incorporating the Trustees of the Belfast Presbyterian College and authorising them to take conveyances and transfers of the said College and other property and for providing for the management of the same by the said Trustees subject to the control of the General Assembly of the Presbyterian Church in Ireland and for other purposes.
- P. clxviii. An Act to confirm certain Provisional Orders made by the Board of Trade under the General Pier and Harbour Act, 1861, relating to Bridlington, Broadstairs, Carnlough, Holywood, Johnshaven, Kettletoft, Penmaenmawr, Plymouth, Seabrook, Southend, Stonehaven, Weymouth, and Worthing (West).
- P. clxix. An Act to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water Works Facilities Act, 1870, and the Public Health Act, 1875, relating to the Local Government District of Upper Sedgley.
- P. clxx. An Act to confirm certain Provisional Orders of the Local Government Board relating to the Borough of Bury (two), the Godalming Main Sewerage District, and the Local Government Districts of Marsden and Northwich.
- clxxi. An Act to authorise the Construction of Additional Docks and other Works at Belfast; to extend the Powers of the Belfast Harbour Commissioners; and for other purposes.
- clxxii. An Act to enable the Mayor Aldermen and Citizens of the City of Newcastle-upon-Tyne to construct New Streets Roads and Street and Road Improvements Tramways and other Works and to make further provision for the good government of the City and for other purposes.
- clxxiii. An Act to confer further powers upon the Corporation of the Borough of Accrington for the Improvement of that Borough.
- clxxiv. An Act for conferring further powers on the Sutton Bridge Dock Company in relation to their undertaking and for other purposes.
- clxxv. An Act to enable the Bristol Waterworks Company to construct Additional Works and raise Additional Capital; and for other purposes.
- clxxvi. An Act to empower the Company of Proprietors of the Glamorganshire Canal Navigation to make and maintain a Railway and other Works at Cardiff and to raise further moneys and for other purposes.
- clxxvii. An Act to incorporate a company for the purpose of undertaking the working and management of railways; and for other purposes.
- clxxviii. An Act to confer further powers on the Waterford, Dungarvan, and Lismore Railway Company, to make provision with reference to traffic on the Railway of that Company and on the Railway of the Great Western Railway Company; and for other purposes.
- clxxix. An Act to authorise the Lynn and Fakenham Railway Company to construct railways and other works and for other purposes.
- clxxx. An Act to authorise the Tredegar Water and Gas Company to sell and the Local Board for the District of Tredegar to purchase the undertaking of the Company.
- clxxxi. An Act to empower the East London Railway Company to construct a new Railway and to abandon an authorised Railway and to lease their undertaking and for other purposes.
- clxxxii. An Act to incorporate a Company for the establishment regulation and maintenance of a general market and for making new streets and improvements in connexion therewith in the parishes of St. Thomas and St. Mary on the north side of the City of Dublin and for other purposes.
- clxxxiii. An Act for extending the time for the completion of the Alford and Sutton tramways.
- clxxxiv. An Act to authorise the Dundee Gas Commissioners to create and issue Debenture Stock; and for other purposes.

- clxxxv. An Act to amend and consolidate the Dundee Police and other Acts; to enable the Dundee Police Commissioners to create and issue Debenture Stock; and for other purposes.
- clxxxvi. An Act for making a Railway from the Kelvin Valley Railway to the Denny Branch of the Caledonian Railway and for other purposes.
- clxxxvii. An Act for conferring further powers on the Plymouth and Dartmoor Railway Company for the construction of works the raising of Money and otherwise in relation to their undertaking and for other purposes.
- clxxxviii. An Act for conferring further powers on the Solway Junction Railway Company; and for other purposes.
- clxxxix. An Act for embanking and reclaiming certain Waste or Slob Lands in South Kerry in the County of Kerry.
- cx. An Act to confer further powers on the Corporation of Glasgow in relation to their Gas undertaking by the construction of connecting Railways between their Dalmarnock Works and the Caledonian Railway; the construction of a new street; and for other purposes.
- cxci. An Act to confer further powers upon the Great Northern Railway Company to enable them to acquire the undertaking of the Louth and Lincoln Railway Company and for other purposes.
- cxcii. An Act to authorise the South London Tramways Company to construct additional Tramways to confer further powers on that Company and for other purposes.
- cxci. An Act for authorising the Ramsgate and Margate Tramways Company to abandon the construction of a portion of their authorised undertaking to extend the time for constructing the remainder of their Undertaking and for other purposes.
- cxci. An Act for dissolving the North London Suburban Tramway Company Limited and re-incorporating them under the name of the North London Tramways Company and to confer upon them powers to construct and maintain additional Tramways and for other purposes.
- cxci. An Act for granting further powers to the Swindon Marlborough and Andover Railway Company, and for other purposes.
- cxvi. An Act to enable the guardians of the poor of the parish of Saint Pancras Middlesex to acquire lands and hereditaments adjacent to their workhouse for the extension thereof; and for other purposes.
- cxvii. An Act to confer further powers on the Didcot Newbury and Southampton Junction Railway Company; to enable them to extend their railway to Southampton and Aldermaston; and for other purposes.
- cxviii. An Act for making Railways in the Counties of Salop Denbigh and Montgomery to be called the Oswestry and Llangynog Railway and for other purposes.
- cxix. An Act for conferring upon the Pontypridd Caerphilly and Newport Railway Company further powers in connexion with their own undertaking and the undertakings of the Rhymney and Brecon and Merthyr Tydfil Junction Railway Companies, and for other purposes.
- cc. An Act for the construction of a quay and other works within the Harbour of Dartmouth for amending the Dartmouth Harbour Orders 1863 and 1870 and for other purposes.
- cc. An Act for incorporating the Rhondda and Swansea Bay Railway Company and for other purposes.
- ccii. An Act for making a Railway from the central Wales Extension Line of the London and North-western Railway Company at Llangammarch to the Neath and Brecon Railway at Derynack in the county of Brecon and for other purposes.
- cciii. An Act to enable the Mayor Aldermen and Citizens of the City of Manchester in the county of Lancaster to acquire and maintain an Art Gallery and for the regulation thereof to execute works for the purposes of their Waterworks to amend and extend the provisions of the Local Acts relating to the City of Manchester and for other purposes.
- cciv. An Act to repeal "The Mersey Docks and Harbour Board (Overhead Railways) Act 1878" and to confer new and further powers upon the Board for the construction of overhead or high level Railways in connexion with their Docks on the Liverpool side of the River Mersey; and for other purposes relating to the Board and their Docks.
- ccv. An Act to incorporate the West Metropolitan Tramways Company, to empower them to construct new Tramways, and acquire existing Tramways, and for other purposes.
- ccvi. An Act to authorise an Extension of Time to the Severn Bridge and Forest of Dean Central Railway Company for completing their Undertaking.
- ccvii. An Act to extend the time for the completion of the Limchouse Subway and for other purposes.

- ccviii. An Act to empower the Trustees of the Will of the late William Earl of Lonsdale to construct a new Dock and other works in connexion with the existing Workington Harbour, and to raise money for that purpose, and to authorise a sale or transfer by the said Trustees of the Workington Harbour undertaking (being part of the estates settled by the will of the said Earl) and for other purposes.
- ccix. An Act to confer further powers on the Easton Neston Mineral and Towcester, Roade and Olney Junction Railway Company, to change the name of the Company, and for other purposes.
- ccx. An Act to extend the Limits of Supply of the Busby Water Company; to authorise the Company to construct new works and raise additional Capital; and for other purposes.
- ccxi. An Act for authorising the London and South-western Railway Company to make new Railways and other works and to purchase additional lands, and for conferring other powers upon them in relation to their own and other undertakings; for the widening of the Somerset and Dorset Railway; for empowering the Company and the London Brighton and South Coast Railway Company to acquire additional lands; for the sale or lease of part of the Plymouth and Dartmoor Railway to the Company; for authorising agreements between the Company and other Corporations bodies and Companies; and for other purposes.
- ccxii. An Act to vest in the Corporation of the borough of Northampton the Race Ground or Freeman's Commons; to extinguish the Freeman's rights of pasturage in certain other lands of the Corporation; to empower the Corporation to form public Parks, and to make New Street Improvements; and for other purposes.
- ccxiii. An Act for making Tramways in the parish of Camberwell in the county of Surrey and for other purposes.
- ccxiv. An Act for conferring upon the Great Western Railway Company further powers in connexion with their own and other undertakings, and for conferring upon other Companies further powers in connexion with undertakings in which they are jointly interested with that Company; for reviving the Powers of constructing portions of the Coleford Railway and taking Lands for the same; for vesting in the Great Western Railway Company the Undertakings of the Swindon and Highworth Light Railway Company and the Berks and Hants Extension Railway Company; and for other purposes.
- ccxv. An Act for conferring further powers on the Whitland, Cronware, and Pendine Railway Company in relation to their undertaking, and for other purposes.
- ccxvi. An Act for making Railways from the Stobeross Branch of the North British Railway to the Glasgow and Coatbridge Branch and the Helensburgh Branch of that Railway, and for other purposes.
- ccxvii. An Act to vest in the Corporation of Nottingham the Nottingham Freeman's Estate; to confer further powers on the Corporation relating to drainage, streets, and other matters of local government, and the borrowing of money; and for other purposes.
- ccxviii. An Act to empower the Rotherham and Bawtry Railway Company to make new Railways at Rotherham to abandon part of their authorised Railway and to raise further capital; and for other purposes.
- ccxix. An Act for conferring on the South-eastern Railway Company various powers with reference to their own undertakings and the undertakings of other Companies and for other purposes.
- ccxx. An Act for incorporating the Tilbury and Gravesend Tunnel Junction Railway Company; for authorising the construction of Railways; and for other purposes.
- P. ccxxi. An Act to amend the Limerick Harbour (Composition of Debt) Act, 1867, in relation to Wellesley Bridge.
- ccxxii. An Act for amending the Metropolitan Street Improvements Act, 1877.
- ccxxiii. An Act to enable the Church Fenton, Cawood, and Wistow Railway Company to construct a Railway to join the Hull, Barnsley and West Riding Junction Railway, and to extend the time for the completion of their authorised Railway; and for other purposes.
- ccxxiv. An Act for conferring upon the Local Board for the District of Chadderton in the county of Lancaster powers for the acquisition of Lands and the construction of Works and for extending and defining the powers of the Local Board in relation to Streets Buildings and the Improvement and good Government of the district and for other purposes.
- ccxxv. An Act to alter and amend the Ballymena and Portglenone Railway Act, 1879.
- ccxxvi. An Act to authorise the construction of a new Road between Peckham in the county of Surrey and Lewisham in the county of Kent.

- ccxxvii. An Act to amalgamate the Lynn and Fakenham the Yarmouth and North Norfolk (Light) the Yarmouth Union the Midland and Eastern and the Peterborough Wisbeach and Sutton Railway Companies.
- ccxxviii. An Act for incorporating the Devon and Cornwall Central Railway Company and for other purposes.
- ccxxix. An Act to enable the Girvan and Portpatrick Junction Railway Company to raise further moneys, to arrange with their creditors, and to authorise in certain events the sale of the Undertaking.
- ccxxx. An Act for incorporating and conferring Powers on the East Warwickshire Waterworks Company.
- ccxxxi. An Act for incorporating and conferring powers on the Ross District Water Company.
- ccxxxii. An Act to enable the Wrexham Mold and Connah's Quay Railway Company to make new Branch Railways Roads Streets and other Works to raise further Capital and for other purposes.
- ccxxxiii. An Act to empower the Justices of the Peace for the county of Essex to consolidate the County Debt, and to create and issue County Stock.
- ccxxxiv. An Act to define and extend the Limits of Gas Supply of the Corporation of Halifax and to make further Provision for the Borrowing of Money by the Corporation and for other purposes.
- ccxxxv. An Act to make further provision respecting the borrowing of Money by the Corporation of Newcastle-upon-Tyne and for other purposes.
- ccxxxvi. An Act to enable the Mayor Aldermen and Burgesses of the Borough of Huddersfield to construct Additional Tramways Street and Road Improvements Waterworks and other Works and to make further provision for the good Government of the Borough and for other purposes.
- ccxxxvii. An Act to make further provision respecting the borrowing of Money by the Corporation of Rotherham to authorise the raising of further Sums the extension of time for construction of Dalton Reservoir and for other purposes.
- ccxxxviii. An Act for making further provisions respecting the issue and management of Swansea Corporation Stock and for altering the Swansea Corporation Loans Act, 1881 so far as necessary for that purpose.
- ccxxxix. An Act for making further provision respecting the Borrowing of Money by the Corporation of Tynemouth and for other purposes.
- ccxli. An Act to make further provision respecting the borrowing of Money by the Corporation of Wolverhampton, and for other purposes.
- ccxli. An Act to extend the powers of the Ionian Bank, and for other purposes.
- ccxlii. An Act for conferring on the trustees and others claiming under the Will of the late Marquis of Bute power to extend their Docks and Railways at Cardiff and for other purposes.
- ccxliii. An Act to consolidate and amend the Acts relating to the borough of Blackburn, and to make further provision for its local government and improvement; to authorise the construction of Tramways; and for other purposes.
- ccxliv. An Act to enable the Mayor Aldermen and Burgesses of the Borough of Bolton to make new streets and street improvements and to construct additional gasworks and waterworks to extend the limits of gas and water supply and to make further provision for the improvement and government of the borough and for other purposes.
- ccxlv. An Act to enable the Corporation of Derby to acquire Little Chester Green to make a new Recreation Ground to vest the Arboretum in the Corporation and to maintain and regulate the same and Bass's Recreation Ground and Baths to make further provision respecting the borrowing of money by the Corporation and for other purposes.
- ccxlv. An Act to authorise the Hull Barnsley and West Riding Junction Railway and Dock Company to make and maintain new Railways and a new Dock and other works and to raise further money and for other purposes.
- ccxlvii. An Act for making a Railway in the county of Middlesex to be called the Latimer Road and Acton Railway, and for other purposes.
- ccxlviii. An Act for the transfer of the Undertaking of the Kingston and London Railway Company to the London and South-western and Metropolitan District Railway Companies; for authorising deviations in the Kingston and London Railway; and for other purposes.
- ccxlix. An Act to make better provision for the Health, Local Government and Improvement of the Borough of Macclesfield, and to

- make further provision in relation to the existing and future loans of the Corporation, and for other purposes.
- cccl. An Act for making a Railway between Wimbledon and Putney in the county of Surrey.
- cccli. An Act for empowering the Alexandra (Newport and South Wales) Docks and Railway Company to make a new Dock and other Works in Extension of the Company's Works in the Borough of Newport in the County of Monmouth and for other purposes.
- ccclii. An Act for incorporating a Company for the construction of a Railway between Bawtry and Scrooby and West Stockwith and of a Dock at West Stockwith.
- cccliii. An Act for incorporating the Bridgewater Railway Company and authorising them to make and maintain the Bridgewater Railway and for authorising arrangements between them and the London and South-western Railway Company and for other purposes.
- cccliv. An Act for incorporating the North Cornwall Railway Company and authorising them to make and maintain the North Cornwall Railway and for authorising arrangements between them and the London and South-western Railway Company and for other purposes.
- ccclv. An Act for making a Railway from Charing Cross to the Waterloo Station of the London and South-western Railway to be called the Charing Cross and Waterloo Electric Railway and for other purposes.
- ccclvi. An Act for forming a Deep Water Harbour at Dover; and for other purposes.
- ccclvii. An Act for incorporating the London Southern Tramways Company and empowering them to construct Tramways in the parishes of Lambeth and Camberwell in the county of Surrey and for other purposes.
- ccclviii. An Act to authorise the Mersey Railway Company to divert a portion of their authorised line in Birkenhead, and to extend it to the central station in Liverpool, and for other purposes.
- ccclix. An Act to confer further powers on the Metropolitan District Railway Company with respect to their own and to joint undertakings.
- ccclx. An Act to authorise the Rhymney Railway Company to make new Railways in the parish of Merthyr Tydfil in the County of Glamorgan; and for other purposes.
- ccclxi. An Act to authorise the Southport and Cheshire Lines Extension Railway Company to extend their Railway into the Borough of Southport to divert a portion of their authorised Railway and for other purposes.
- ccclxii. An Act for incorporating the Regent's Canal City and Docks Railway Company; for the transfer to them of the undertaking of the Regent's Canal Company; for authorising the construction of Railways from the Great Western Railway at Paddington to the City and to the Royal Albert Dock of the London and Saint Katharine Dock's Company; and of street improvements and other works; and for other purposes.
- ccclxiii. An Act for authorising the South-eastern Railway Company to make new lines and widen their existing lines in the City of London and in the Counties of Middlesex Surrey and Kent and for other purposes.
- ccclxiv. An Act for making Railways in the Counties of Middlesex and Essex, to be called "The Metropolitan Outer Circle Railway," and for other purposes.
- ccclxv. An Act for making a Railway from Radstock to Congresbury in the county of Somerset and for other purposes.
- ccclxvi. An Act for making a Railway from Beaconsfield in the County of Buckingham to Harrow in the County of Middlesex and for other purposes.
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PRIVATE ACTS,

PRINTED BY THE QUEEN'S PRINTER,

AND WHEREOF THE PRINTED COPIES MAY BE GIVEN IN EVIDENCE.

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1. An Act for confirming certain arrangements made between the co-partnership of Crawshay Brothers and their landlords respecting the lease of the Cyfarthfa works and property in the parish of Merthyr Tydfil in the county of Glamorgan; and for other purposes.
 2. An Act to provide during the subsistence of the trust for accumulation contained in the Will of Thomas George Corbett Esquire deceased an annual sum for maintenance of the person of full age entitled in immediate expectancy and to enable the grant of jointures by persons entitled in expectancy and for other purposes.
 3. An Act to enable the Trustees of the Earl of Aylesford's Settled Estates to raise money for payment of his Debts, and for vesting in such Trustees his Life Interest in the Settled Estates and for other purposes.
 4. An Act for carrying into effect an arrangement respecting the Estates of His Highness Maharajah Duleep Singh.
 5. An Act to give to the Trustees of the Will of Sir Richard Colt Hoare Baronet deceased power to sell property settled by the Testator.

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TO THE

PUBLIC GENERAL ACTS,

45 & 46 VICTORIA.—A.D. 1882.

NOTE.—The capital letters placed after the chapter have the following signification :—

E.	that the Act relates to	England (and Wales, if it so extend).
S.	" "	Scotland exclusively.
I.	" "	Ireland exclusively.
W.	" "	Wales exclusively.
E. & I.	" "	England and Ireland.
E. & S.	" "	England and Scotland.
U.K.	" "	Great Britain and Ireland (and Colonies, if it so extend).
C.	" "	The Colonies, or any of them.

** Several Public Acts of a Local Character which have been placed among the Local Acts are included in this Index. These Acts are distinguished by their Chapters being given in Roman Numerals.

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d ministration of Justice. <i>See</i> Bills of Exchange, &c. Bills of Sale. Citation Law Amendment. Civil Impri- sonment. Conveyancing. Copyright. County Courts. Documentary Evidence. En- tail Law Amendment. In- ferior Courts Judgments Extension. Interments (Felo de se). Lunacy. Married Women's Property. Petty Sessions, Ireland. Preven- tion of Crime. Settled Land. Supreme Court of Judicature.		Allotments; for the Extension of Allotments -	80. E.
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		Annuities, Government; to ex- tend the Acts relating to the purchase of small Govern- ment Annuities and to as- suring payments of money on death -	51. U.K.
		Annuity to Duke of Albany. <i>See</i> Albany (Duke of).	
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Corn Returns; to amend the Law respecting the obtaining of Corn Returns -	37. E.	Drainage, &c. Orders Confirmation; to confirm a Provisional Order under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133.), relating to Fenstanton Improvements, situate in the parish of Fenstanton (Huntingdon) -	lxvii. E.
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Corrupt Practices (Suspension of Elections); to suspend for a limited period, on account of Corrupt Practices, the holding of an Election of a Member or Members to serve in Parliament for certain cities and boroughs [Boston; Canterbury; Chester; Gloucester; Macclesfield; Oxford; Sandwich] -	68. E.		

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Edinburgh (Roads). See Roads (Edinburgh) Order Confirmation.		Evidence (Documentary); to amend the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37.), and other enactments relating to the evidence of documents by means of copies printed by the Government Printers -	9. U.K.
Education; to amend the Intermediate Education (Ireland) Act, 1878 (41 & 42 Vict. c. 66.) -	69. I.	Expiring Laws Continuance; to continue various expiring Laws -	64. U.K.
Education Department Orders Confirmation; to confirm certain Provisional Orders made by the Education Department under the Elementary Education Act, 1870 (33 & 34 Vict. c. 75.), to enable the School Boards for West Ham (Essex) and Terrington St. John (Norfolk) to put in force the Lands Clauses Consolidation Act, 1845, and the Acts amending the same -	cii. E.	[For Acts continued, see Table A.]	
— to confirm certain similar Orders to enable the School Boards for Finchley, Llanarth, and Upper Dylais to put in force the Lands Clauses Consolidation Act, 1845, &c. -	cxix. E.	Explosions of Boilers; to make better provision for Inquiries with regard to Boiler Explosions -	22. U.K.
— to confirm a similar Order to enable the School Board for London to put in force the Lands Clauses Consolidation Act, 1845, &c. -	cxli. E.	Extension of Allotments; for the Extension of Allotments — See also Labourers Cottages, &c.	80. E.
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Election of Representative Peers; to amend the law relating to the Election of Lords Temporal to serve in Parliament for Ireland -	26. I.	Fishery Board, Scotland; to establish a Fishery Board for Scotland -	78. S.
Elections of Members of Parliament Suspension. See Corrupt Practices.		Friendly Societies; to amend so much of the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60.) as relates to quinquennial returns of sickness and mortality -	35. U.K.
Electric Lighting; to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland -	56. U.K.	— See also Revenue, Friendly Societies, and National Debt.	
Elementary Education Act, 1870. See Education Department Orders Confirmation.		Fruit Pickers Lodgings; to extend the Public Health Act, 1875 (38 & 39 Vict. c. 55.), to the making of Byelaws for Fruit Pickers -	23. E.
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		— See also Local Government Board's Orders Confirmation (b.)	

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General Pier and Harbour Act, 1861. <i>See</i> Pier and Harbour Orders Confirmation.		in the parish of St. Michael, Coventry (Warwick) -	xxvii. E.
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Government Annuities; to extend the Acts relating to the purchase of small Government Annuities and to assuring payments of money on death -	51. U.K.	— to confirm a similar Order for the inclosure of certain Lands known as Cefn Drawen Common, situate in the parish of Glaschw m (Radnor) -	xxx. E.
Government Printers. <i>See</i> Documentary Evidence.		Income Tax. <i>See</i> Customs and Inland Revenue.	
Gunpowder, Use of in Slate Mines; to amend the law relating to the use of Gunpowder in Slate Mines	3. U.K.	India (Home Charges Arrears); to make provision for the arrangement of Accounts between the Commissioners of Her Majesty's Treasury and the Secretary of State in Council of India in respect of certain Home Charges for Her Majesty's Forces serving in India -	79. U.K.
Harbour Orders Confirmation. <i>See</i> Pier and Harbour Orders Confirmation.		Inferior Courts Judgments Extension; to render Judgments obtained in certain Inferior Courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom	31. U.K.
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Highway Rate Assessment, &c; to extend certain Provisions of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41.), to the Highway Rate, and for other purposes -	27. E.	Inland Revenue Buildings; for the transfer of Property in Ireland held for the Service of Her Majesty's Customs and of the Inland Revenue to the Commissioners of Public Works in Ireland; and for other purposes relating thereto -	17. I.
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Inclosure, &c. Orders Confirmation; to confirm (in pursuance of a Report of the Inclosure Commissioners for England and Wales) the Provisional Orders for the regulation of certain lands known as Crosby Garrett Common (Westmoreland), and for the regulation of certain Lands known as Stivichall Common,			

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Intoxicating Liquors, Sale of. <i>See</i> Passenger Vessels Licences.		Labourers Dwellings Acts; to amend the Artizans and Labourers Dwellings Acts (38 & 39 Vict. c. 36. and 42 & 43 Vict. cc. 63., 64.) -	54 U.K.
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Irish Land Commission. <i>See</i> Public Works Loans.		Lands Clauses Act, 1845. <i>See</i> Education Department Orders Confirmation.	
Irish Reproductive Loan Fund; to amend the Irish Reproductive Loan Fund Act, 1874 (37 & 38 Vict. c. 86.) -	16. I.	Licences (Beer Dealers); to amend the Beer Dealers' Retail Licences Act, 1880 (43 Vict. c. 6.) -	34. E.
Isle of Man (Officers); to amend the Isle of Man (Officers) Act, 1876 (39 & 40 Vict. c. 43.) -	46. U.K.	Licences for Sale of Liquors; to amend the Law relating to Licences to retail Intoxicating Liquors on Passenger Vessels in Scotland -	66. S.
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Judicature, Court of; to amend the Supreme Court of Judicature Act (Ireland), 1877 (40 & 41 Vict. c. 57.) -	70. I.	Local Government Board's Orders Confirmation :—	
Justice, Administration of. <i>See</i> —Bills of Exchange, &c. Bills of Sale. Citation Law Amendment. Civil Imprisonment. Conveyancing. Copyright. County Courts. Documentary Evidence. Entail Law Amendment. Inferior Courts Judgments Extension. Interments (Felo de se). Lunacy. Married Women's Property. Petty Sessions. Ireland. Prevention of Crime.		(a) <i>Artizans and Labourers Dwellings Act, 1875</i> :— — to confirm a Provisional Order of the Local Government Board under the provisions of the Artizans and Labourers Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36.), relating to the Borough of Nottingham -	lix. E.
		(b) <i>Gas and Water Works Facilities Act, 1870, and Public Health Act, 1875</i> :— — to confirm a Provisional Order of the Local Government Board under the provisions of the Gas and Water	

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| Works Facilities Act, 1870 (33 & 34 Vict. c. 70.), and the Public Health Act, 1875 (38 & 39 Vict. c. 55.), relating to the Local Government District of Upper Sedgley - | Chap. | |
| Local Government Board's Orders Confirmation— <i>cont.</i> | clxix. E. | |
| (c) <i>Highways and Locomotives Act</i> , 1878: | | |
| — to confirm a Provisional Order of the Local Government Board under the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77.), relating to the County of Kent - | xxvi. E. | |
| (d) <i>Poor Law Acts</i> , 1876 and 1879: | | |
| — to confirm certain Orders of the Local Government Board under the provisions of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61.), as amended and extended by the Poor Law Act, 1879 (42 & 43 Vict. c. 12.), relating to the parishes of Barmbrough, Burghwallis, Coleshill, Conisbrough, Forrest Hill, Hickleton, Inglesham, Kirk Bramwith, Kirk Sandall and Trumfleeth, Shotover, and Shotover Hill Place, and to the Townships of Adwick-le-Street, Askern, Barnby-upon-Don or Barnby Dunn, Campsall, Dalton, Ecclesfield, Helmington Row, Langthwaite-with-Tilts, Mexbrough, Moss, Owston, Thorpe-in-Balne, and Willington - | xxxiv. E. | |
| (e.) <i>Public Health Act</i> , 1875: | | |
| — to confirm certain Provisional Orders of the Local Government Board relating to the City and County of Bristol, the Local Government District of Bromley, the Port of Cardiff, the Rural Sanitary District of the Glendale Union, the Borough of Hastings, the Local Government District of Merthyr Tydfil, the Boroughs of Newport (Monmouthshire) and Portsmouth, the Local Government Dis- | | |
| trict of Sandal Magna, and the Rural Sanitary District of the Ware Union - | | xxxiii. E. |
| Local Government Board's Order Confirmation— <i>cont.</i> | | |
| (e) <i>Public Health Act</i> , 1875— <i>cont.</i> | | |
| — to confirm certain similar Orders relating to the City and Borough of Bath, the Local Government District of Brierley Hill, the Borough of Burton-upon-Trent, the Rural Sanitary District of the Keighley Union, the Boroughs of Margate, Newbury, and Preston, the Town of Ramsgate, the Borough of Saint Helens, and the Rural Sanitary District of the Settle Union - | lx. E. | |
| — to confirm certain similar Orders relating to the Borough of Birmingham (two), the Local Government Districts of Gainsborough, Smethwick, and South Blyth, the Borough of Stafford, the Staines Joint Hospital District, the Improvement Act District of Surbiton, the Uxbridge Joint Hospital District, the Local Government District of Watford, and the Borough of Wigan - | lxi. E. | |
| — to confirm certain similar Orders relating to the Rural Sanitary District of the Bilericay Union, the City and County of Bristol, the Local Government District of Compton Gifford, the Rural Sanitary District of the Farnham Union, the Local Government Districts of Hendon and Madron, the Borough of Nottingham, the Local Government Districts of Rusholme and Torquay, the Borough of Walsall, the Improvement Act District of West Bromwich, and the Local Government District of Worthing - | lxii. E. | |
| — to confirm certain similar Orders relating to the Borough of Ashton-under-Lyne, the Improvement Act District of Bethesda, the Local Government District | | |

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Local Government Board's Orders Confirmation— <i>cont.</i>		
(e) <i>Public Health Act, 1875—cont.</i>		
— to confirm certain similar Orders relating to the Local Government Districts of Ealing, Edmonton, and Crompton, the Ports of Newcastle, North Shields and South Shields, the Port of Plymouth, and the Local Government Districts of West Cowes and Woodford -	lxiii. E.	
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— to confirm certain similar Orders relating to the towns of Ballymena, Clonmel, Fermoy, and Letterkenny -	xxxix. I.	
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	32. E.	
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Public Health; to amend the Public Health (Scotland) Act, 1867 (30 & 31 Vict. c. 101.) -	11. S.
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Regius Professorship of Divinity. <i>See</i> Somersham Rectory.	
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Rights of Common; to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and Extinguishment of Rights of Common -	15. E.
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Roads (Edinburgh) Order Confirmation; to confirm a Provisional Order of one of Her Majesty's Principal Secretaries of State for providing that the Roads and Bridges (Scotland) Act, 1878 (41 & 42 Vict. c. 51.), shall come into force in the county of Edinburgh on the 1st day of September 1882 subject to certain conditions -	lxxii. S.
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South Wales Turnpike Roads; to further amend the Law relating to Turnpike Roads in South Wales	67. W.	
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— to confirm certain similar Orders relating to Birmingham and Aston Tramways, Birmingham and Suburban Tramways, Birmingham and Western Districts Tramways, Manchester, Bury, and Rochdale Tramways (Extensions), and Walsall and District Tramways	ci. E.	
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War Office; for the acquisition of Property and the provision of new Buildings for the Admiralty and War Office	32.	E.	Water Orders Confirmation; See also Local Government Board's Orders Confirmation (b).	
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T A B L E S

SHOWING

THE EFFECT OF THE YEAR'S LEGISLATION.

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 TABLE B.—Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 45 & 46 Vict.

(A.)

Acts of 45 & 46 Vict. (in order of Chapter), showing their effect on former Acts.

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1.	<i>Consolidated Fund</i> (313,270 <i>l.</i>) [U.K.]	11.	<i>Public Health (Scotland) Act Amendment—</i> cont.
2.	<i>Post Office (Reply Post Cards)</i> [U.K.] Authorises issue of Reply Post Cards.		Construes Act with 30 & 31 Vict. c. 101, Public Health (Scotland) Act, 1867.
3.	<i>Slate Mines (Gunpowder)</i> [U.K.] Provides for exemption of slate mines from certain regulations as to use of explosives contained in s. 23 of 35 & 36 Vict. c. 77., Metalliferous Mines Regulation Act, 1872.	12.	<i>Militia Storehouses</i> [E.] Repeals part of section 3 of 17 & 13 Vict. c. 105., Militia Law Amend- ment Act, 1854.
4.	<i>Consolidated Fund</i> (424,844 <i>l.</i> 14 <i>s.</i> 10 <i>d.</i> and 6,793,498 <i>l.</i>) [U.K.]	13.	<i>Arklow Harbour</i> [I.] Preamble recites 32 Geo. 3. c. 24. (I.) and 26 & 27 Vict. c. ccix. Incorporates parts of 10 & 11 Vict. c. 16., Commissioners Clauses Act, 1847, and parts of 10 & 11 Vict. c. 27., Harbours, Docks, and Piers Clauses Act, 1847.
5.	<i>Duke of Albany (Establishment)</i> [U.K.] Grants additional annuity of 10,000 <i>l.</i> for life to the Duke of Albany.	14.	<i>Metropolis Management and Building Acts</i> (Amendment) [E.] Amends, and applies, 18 & 19 Vict. c. 120., Metropolis Management Act, 1855. Amends, and applies, 18 & 19 Vict. c. 122., Metropolitan Building Act, 1855. Applies 25 & 26 Vict. c. 102., Metropolis Management Amendment Act, 1862.
6.	<i>General Police and Improvement (Scotland)</i> [S.] Repeals section 3 of 31 & 32 Vict. c. 102., General Police and Improvement (Scotland) Act, 1862, Amendment Act.	15.	<i>Commonable Rights</i> [E.] Amends 8 & 9 Vict. c. 18., Lands Clauses Consolidation Act, 1845. Amends 15 & 16 Vict. c. 79., Amends 17 & 18 Vict. c. 97., Applies Inclosure Acts, 1845 to 1878. " 42 & 43 Vict. c. 37., Commons Act, 1879.
7.	<i>Army (Annual)</i> [U.K.] Continues, and amends, 44 & 45 Vict. c. 58., Army Act, 1881.		
8.	<i>Consolidated Fund</i> (9,282,435 <i>l.</i>) [U.K.]		
9.	<i>Documentary Evidence</i> [U.K.] Amends 31 & 32 Vict. c. 37., Docu- mentary Evidence Act, 1868.		
10.	<i>Military Manœuvres</i> [E.] Applies 44 & 45 Vict. c. 58., Army Act, 1881.		
11.	<i>Public Health (Scotland) Act Amendment</i> [S.] Repeals 42 & 43 Vict. c. 15., Public Health (Scotland) Act, 1867, Amend- ment Act, 1879.		

Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—continued.

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| <p>Ch.
16. <i>Irish Reproductive Loan Fund Act</i> (1874) <i>[I.]</i>
Repeals clauses 2 & 3 of section 5 of 37 & 38 Vict. c. 86., <i>Irish Reproductive Loan Fund Act</i>, 1874.
Applies 22 Vict. c. 14., <i>Manor Courts, &c. (Ireland) Act</i>, 1859.</p> <p>17. <i>Customs and Inland Revenue Buildings (Ireland) [I.]</i>
Applies 32 & 33 Vict. c. 74., <i>Public Works (Ireland) Act</i>, 1869.
Applies (with modification) s. 275 of 39 & 40 Vict. c. 36., <i>Customs Consolidation Act</i>, 1876.
Incorporates 8 & 9 }
Vict. c. 18., }
Incorporates 23 & 24 }
Vict. c. 106., }
Incorporates 14 & 15 } <i>Lands Clauses</i>
Vict. c. 70., } <i>Consolidation</i>
Incorporates 23 & 24 } <i>(Ireland) Acts,</i>
Vict. c. 97., } <i>1845 to 1868.</i>
Incorporates 27 & 28 }
Vict. c. 71., }
Incorporates 31 & 32 }
Vict. c. 70., }
Affects 16 & 17 Vict. } <i>Customs Con-</i>
c. 107., } <i>solidation Acts,</i>
Affects 39 & 40 Vict. } <i>1853 and 1876.</i>
c. 36., }
Affects 42 & 43 Vict. } <i>36., Customs</i>
Buildings Act, 1879.</p> <p>18. <i>Public Schools (Scotland) Teachers [S.]</i>
Regulates procedure of School Boards in dismissal of teachers.
Applies 35 & 36 Vict. 62., <i>Education (Scotland) Act</i>, 1872.</p> <p>19. <i>Interments (felo de se) [E.]</i>
Repeals 4 Geo. 4. c. 52., <i>Felo de se Act</i>, 1823.
Applies 43 & 44 Vict. c. 41., <i>Burial Laws Amendment Act</i>, 1880.</p> <p>20. <i>Poor Rate Assessment and Collection Act</i>, 1869, <i>Amendment [E.]</i>
Amends 32 & 33 Vict. c. 41., <i>Poor Rate Assessment and Collection Act</i>, 1869.</p> <p>21. <i>Places of Worship Sites Amendment [E.]</i>
Amends 36 & 37 Vict. c. 50., <i>Places of Worship Sites Act</i>, 1873.
Applies 5 & 6 Will. 4. c. 69., <i>Workhouse Property Act</i>, 1835.</p> <p>22. <i>Boiler Explosions [U.K.]</i>
Applies, in England, the <i>Summary Jurisdiction Acts</i>.
Applies, in Scotland, 27 & 28 Vict. c. 53. and 44 & 45 Vict. c. 33., <i>Summary Jurisdiction Acts</i>, 1864 and 1881.</p> | <p>Ch.
22. <i>Boiler Explosions—cont.</i>
Applies, in Ireland, 14 & 15 Vict. c. 93., <i>Petty Sessions (Ireland) Act</i>, 1851, &c.</p> <p>23. <i>Public Health (Fruit Pickers Lodgings) [E.]</i>
Amends section 314 of 38 & 39 Vict. c. 55., <i>Public Health Act</i>, 1875.</p> <p>24. <i>Petty Sessions (Ireland) [I.]</i>
Amends 14 & 15 Vict. c. 93., <i>Petty Sessions (Ireland) Act</i>, 1851.</p> <p>25. <i>Prevention of Crime (Ireland) [I.]</i>
Applies 40 & 41 Vict. c. 57., <i>Supreme Court of Judicature Act (Ireland)</i>, 1877.
Applies 39 & 40 Vict. c. 78., <i>Juries Procedure (Ireland) Act</i>, 1876.
Applies 14 & 15 Vict. c. 93., <i>Petty Sessions (Ireland) Act</i>, 1851.
Applies section 39 of 33 Vict. c. 9., <i>Peace Preservation (Ireland) Act</i>, 1870.
Applies 44 & 45 Vict. c. 5., <i>Peace Preservation (Ireland) Act</i>, 1881.
Re-enacts (with certain provisoes) 11 & 12 Vict. c. 20., <i>Alien Act</i>, 1848.</p> <p>26. <i>Election of Representative Peers (Ireland) [I.]</i>
Amends 39 & 40 Geo. 3. c. 67., <i>Act of Union of Great Britain and Ireland</i>.</p> <p>27. <i>Highway Rate Assessment and Expenditure [E.]</i>
Extends certain provisions of 32 & 33 Vict. c. 41. (<i>Poor Rate Assessment and Collection Act</i>, 1869) to the <i>Highway Rate</i>.
Repeals section 30 of 5 & 6 Will. 4. c. 50., <i>Highway Act</i>, 1835.
Applies 27 & 28 Vict. c. 39., <i>Union Assessment Committee Amendment Act</i>, 1864.
Applies 41 & 42 Vict. c. 77., <i>Highways and Locomotives (Amendment) Act</i>, 1878.
Applies 38 & 39 Vict. c. 55., <i>Public Health Act</i>, 1875.</p> <p>28. <i>Consolidated Fund</i> (5,703,891l.) [U.K.]</p> <p>29. <i>County Court Amendment (Ireland) [I.]</i>
Applies 40 & 41 Vict. c. 56., <i>County Officers and Courts (Ireland) Act</i>, 1877.
Applies 14 & 15 Vict. c. 57., <i>Civil Bills, &c. (Ireland) Act</i>, 1851.
Repeals sections 127, 128, 129, and 130 of 14 & 15 Vict. c. 57., <i>Civil Bills, &c. (Ireland) Act</i>, 1851.
Repeals section 55 of 40 & 41 Vict. c. 56.) <i>County Officers and Courts (Ireland) Act</i>, 1877.
Extends jurisdiction of County Courts under 40 & 41 Vict. c. 56. s. 33.</p> |
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Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
30. *Baths and Wash Houses* [E.]
Amends sections 24 and 27 of 9 & 10 Vict. c. 74., Public Baths and Wash Houses Act, 1846.
31. *Inferior Courts Judgments Extension* [U.K.]
Applies 31 & 32 Vict. c. 54., Judgments Extension Act, 1868.
Applies (as to making, &c. of rules) County Courts Acts, England; Sheriffs Courts Acts, Scotland; and Civil Bill Courts Acts, Ireland.
32. *Public Offices Site* [E.]
Applies 8 & 9 Vict. c. 18.,
Applies 23 & 24 Vict. c. 106.
Applies 32 & 33 Vict. c. 18. } Lands Clauses Consolidation Acts, 1845, 1860, and 1869.
Applies 15 & 16 Vict. c. 28., Public Works Act, 1852.
Applies Summary Jurisdiction Acts.
Exempts buildings from operation of 18 & 19 Vict. c. 122., Metropolitan Buildings Act, 1855.
33. *Metropolitan Board of Works (Money)* [E.]
Amends 38 & 39 Vict. c. 65.,
Amends 44 & 45 Vict. c. 48., } Metropolitan Board of Works (Money) Acts, 1875 and 1881.
Amends 32 & 33 Vict. c. 102., Metropolitan Board of Works (Loans) Act, 1869.
Applies Metropolitan Board of Works (Loans) Acts, 1869 to 1871.
Applies Metropolitan Board of Works (Money) Acts, 1875 to 1881.
Applies 18 & 19 Vict. c. 120., Metropolitan Management Act, 1855.
Empowers Board to expend Moneys for purposes described in the Schedules.
Applies 24 & 25 Vict. c. 98., as to forgery of Metropolitan Bills.
34. *Beer Dealers' Retail Licences (Amendment)* [E.]
Amends 43 Vict. c. 6., Beer Dealers' Retail Licences Act, 1880.
Extends 32 & 33 Vict. c. 27., Wine and Beerhouse Act, 1869.
Applies 35 & 36 Vict. c. 94., Licensing Act, 1872.
35. *Friendly Societies (Quinquennial Returns)* [U.K.]
Repeals part of 38 & 39 Vict. c. 60., Friendly Societies Act, 1875.
- Ch.
36. *Casual Poor* [E.]
Amends 34 & 35 Vict. c. 108., Pauper Inmates Discharge and Regulation Act, 1871.
Applies 30 & 31 Vict. c. 6., Metropolitan Poor Act, 1867.
Applies 5 Geo. 4. c. 83., Rogues and Vagabonds.
37. *Corn Returns* [E.]
Repeals 5 & 6 Vict. c. 14., Corn Importation Act, 1842.
Repeals 27 & 28 Vict. c. 87., Corn Returns Act, 1864.
Repeals section 56 of 6 & 7 Will. 4. c. 71., Commutation of Tithes Act, 1836.
Applies 41 & 42 Vict. c. 49., Weights and Measures Act, 1878.
Applies 42 & 43 Vict. c. 49., &c., Summary Jurisdiction Acts.
38. *Settled Land* [E. & I.]
Repeals (in part) 23 & 24 Vict. c. 145., Trustees, &c. Act, 1860.
Repeals (in part) 27 & 28 Vict. c. 114., Improvement of Land Act, 1864.
Repeals (in part) 40 & 41 Vict. c. 18., Settled Estates Act, 1877.
Applies 39 & 40 Vict. c. 59., Appellate Jurisdiction Act, 1876.
Applies 44 & 45 Vict. c. 68., Supreme Court of Judicature Act, 1881.
Applies 40 & 41 Vict. c. 57., Supreme Court of Judicature (Ireland) Act, 1877.
Applies 40 & 41 Vict. c. 56., County Officers and Courts (Ireland) Act, 1877.
39. *Conveyancing* [E. & I.]
Amends, and applies, 44 & 45 Vict. c. 41., Conveyancing Act, 1881.
Repeals 17 & 18 Vict. c. 75., Acknowledgment of Deeds by Married Women Act, 1854.
Repeals 41 & 42 Vict. c. 23., Acknowledgment of Deeds by Married Women (Ireland) Act, 1878.
Repeals (in part) 3 & 4 Will. 4. c. 74., Fines and Recoveries Act, 1833.
Repeals (in part) 4 & 5 Will. 4. c. 92., Fines and Recoveries (Ireland) Act, 1834.
Applies 39 & 40 Vict. c. 59., Appellate Jurisdiction Act, 1876.
Applies 44 & 45 Vict. c. 68., Supreme Court of Judicature Act, 1881.
Applies 40 & 41 Vict. c. 57., Supreme Court of Judicature (Ireland) Act, 1877.

Table A.—Acts of 45 & 46 Vict. (in order of Chapter, &c.)—continued.

- Ch.
40. *Copyright (Musical Compositions)* [U.K.]
Amends Law of Copyright as to Musical Compositions.
Amends 3 & 4 Will. 4. c. 15., as to Costs in Actions, &c.
41. *Customs and Inland Revenue* [U.K.]
Grants Import Duties on Tea.
Repeals customs duties under 39 & 40 Vict. c. 35. (Customs Tariff Act, 1876) on vegetable matter other than chicory.
Repeals excise duty under 35 & 36 Vict. c. 20. (Customs, &c. Act, 1872) on vegetable matter other than chicory.
Grants duty on imitations of coffee, &c.: Applies 33 & 34 Vict. c. 98., Stamp Duties Act, 1870; Repeals section 5 of 43 Geo. 3. c. 129.
Grants duties of Income Tax, and applies former Acts (except section 22 of 44 & 45 Vict. c. 12.)
42. *Civil Imprisonment (Scotland)* [S.]
Construes Act with 43 & 44 Vict. c. 34., Debtors (Scotland) Act, 1880, and 44 & 45 Vict. c. 22., Bankruptcy, &c. (Scotland) Act, 1881.
43. *Bills of Sale Act, 1878, Amendment* [E.]
Amends 41 & 42 Vict. c. 31., Bills of Sale Act, 1878.
Applies section 60 of 32 & 33 Vict. c. 71., Bankruptcy Act, 1869.
44. *Pensions Commutation* [U.K.]
Amends 34 & 35 Vict. c. 36., Pensions Commutation Act, 1871.
45. *Bombay Civil Fund* [U.K.]
Provides for transfer of assets to Secretary of State for India.
46. *Isle of Man (Officers)* [U.K.]
Amends 39 & 40 Vict. c. 43., Isle of Man (Officers) Act, 1876.
Applies 22 Vict. c. 26., Superannuation Act, 1859.
47. *Arrears of Rent (Ireland)* [I.]
Applies 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881.
Applies 23 & 24 Vict. c. 154., Landlord and Tenant (Ireland) Act, 1860.
Applies 33 & 34 Vict. c. 46., Landlord and Tenant (Ireland) Act, 1870.
Applies 44 & 45 Vict. c. 71., Irish Church Act Amendment Act, 1881.
Applies 12 & 13 Vict. c. 104., Poor Law (Ireland) Act, 1849 (as to Emigration).
48. *Reserve Forces* [U.K.]
Consolidates Enactments relating to the Reserve Forces.
- Ch.
48. *Reserve Forces*—cont.
Repeals 30 & 31 Vict. c. 110., Reserve Force Act, 1867.
Repeals 30 & 31 Vict. c. 111., Militia Reserve Act, 1867.
Repeals part of 33 & 34 Vict. c. 67., Army Enlistment Act, 1870.
Repeals part of 34 & 35 Vict. c. 86., { Regulation of the Forces
Repeals part of 44 & 45 Vict. c. 57., { Acts, 1871 and 1881.
Repeals part of 36 & 37 Vict. c. 68., Militia Service Act, 1873.
Repeals part of 41 & 42 Vict. c. 10., Mutiny Act, 1878.
Repeals part of 42 & 43 Vict. cc. 32., 33., Army Discipline Acts, 1879.
Repeals part of 44 & 45 Vict. c. 58., Army Act, 1881.
49. *Militia* [U.K.]
Consolidates Enactments relating to the Militia.
Re-enacts (with certain modifications) 38 & 39 Vict. c. 69., Militia (Voluntary Enlistment) Act, 1875.
Applies 44 & 45 Vict. c. 58., Army Act, 1881.
Re-enacts certain Enactments in 33 & 34 Vict. c. 67.) and 34 & 35 Vict. c. 86., with respect to Local Militia.
Repeals the several Acts and portions of Acts described in the Second Schedule. [These enactments will be found in their chronological order in Table B.]
50. *Municipal Corporations* [E.]
Consolidates Enactments relating to Municipal Corporations.
Repeals the several Acts and portions of Acts described in the First Schedule. [These Enactments will be found in Table B. See pages 430, 431.]
Applies this Act to every City and Town to which 5 & 6 Will. 4. c. 76. (Municipal Corporations Act, 1835) applies, &c.
Applies 41 & 42 Vict. c. 26., Parliamentary and Municipal Registration Act, 1878.
Applies 35 & 36 Vict. c. 33., Ballot Act, 1872.
Applies 31 & 32 Vict. c. 125., Parliamentary Elections Act, 1868.
Applies 8 & 9 Vict. c. 18., { Lands Clauses Consolidation Acts, 1845, 1860, and 1869.
Applies 23 & 24 Vict. c. 106., {
Applies 32 & 33 Vict. c. 18., }

Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
50. *Municipal Corporations*—cont.
Applies 24 & 25 Vict. c. 96. s. 75., Larceny Act, 1861.
Applies 38 & 39 Vict. c. 89. s. 40., Public Works Loans Act, 1875.
Applies 16 & 17 Vict. c. 137. s. 65., Charitable Trusts Act, 1853.
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 38 Geo. 3. c. 52., Trial of Offences in Cities, &c.
Applies 1 & 2 Will. 4. c. 41., Appointment of Special Constables.
Applies 24 & 25 Vict. c. 47., Harbours and Passing Tolls Act, 1861.
Applies 3 Geo. 4. c. 46., Return and levying of Fines, Forfeitures, &c.
Applies 31 & 32 Vict. c. 72., Promissory Oaths Act, 1868.
Applies 30 & 31 Vict. c. 102., Representation of the People Act, 1867.
Applies 9 Geo. 4. c. 61., Licences to Innkeepers, &c.
51. *Government Annuities* [U.K.]
Repeals (in part) 16 & 17 Vict. c. 45. and 27 & 28 Vict. c. 43., Government Annuities Acts, 1853 and 1864.
Construes Act with 27 & 28 Vict. c. 43.
Applies 27 & 28 Vict. c. 46., Government Annuities (Investments) Act, 1864.
Applies 38 & 39 Vict. c. 60., Friendly Societies Act, 1875.
52. *Annual Turnpike Acts Continuance* [E.]
Repeals and continues Local Acts as set forth in Schedule.
53. *Entail (Scotland)* [S.]
Defines "Entail Acts" as set out in Schedule.
Applies 11 & 12 Vict. c. 36.,
Applies 31 & 32 Vict. c. 84.,
Applies 38 & 39 Vict. c. 61.,
Applies 41 & 42 Vict. c. 28.,
Applies 44 & 45 Vict. c. 47.,
Presumption of Life Limitation (Scotland) Act, 1881.
54. *Artizans Dwellings* [U.K.]
Amends 38 & 39 Vict. c. 36.,
Amends 42 & 43 Vict. cc. 63., 64.,
Artizans and Labourers Dwellings Acts, 1875 and 1879.
- Ch.
54. *Artizans Dwellings*—cont.
Applies 8 & 9 Vict. c. 18., Lands Clauses Act, 1845.
Applies 31 & 32 Vict. c. 130., Artizans and Labourers Dwellings Act, 1868.
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
55. *Merchant Shipping (Expenses)* [U.K.]
Construes Act with Merchant Shipping Acts, 1854 to 1880.
Repeals (in part) 17 & 18 Vict. c. 104.,
Repeals (in part) 39 & 40 Vict. c. 80.,
Repeals section 27 of 7 Geo. 4. c. 64.,
Administration of Criminal Justice.
Repeals part of sect. 22 of 4 & 5 Will. 4. c. 36., Central Criminal Act.
Repeals part of section 1 of 7 & 8 Vict. c. 2., Trial of Offences on the High Seas.
Repeals 40 & 41 Vict. c. 44., Superannuation (Mercantile Marine Fund Officers) Act, 1877.
Applies 18 & 19 Vict. c. 119., Passengers Act, 1855.
Applies 45 & 46 Vict. c. 22., Boiler Explosions Act, 1882.
Applies 29 & 30 Vict. c. 39., Exchequer and Audit Act, 1866.
56. *Electric Lighting* [U.K.]
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.
Applies 38 & 39 Vict. c. 83., Local Loans Act, 1875.
Applies 10 & 11 Vict. c. 15.,
Applies 34 & 35 Vict. c. 41.,
Applies 37 & 38 Vict. c. 40.,
Board of Trade Arbitrations Act, 1874.
Applies 32 & 33 Vict. c. 73.,
Applies 41 & 42 Vict. c. 76.,
Applies 8 & 9 Vict. cc. 18., 19.,
Applies 23 & 24 Vict. c. 106.,
Applies 32 & 33 Vict. c. 18.,
Gasworks Clauses Acts, 1847 and 1871.
Telegraph Acts, 1869 and 1878.
Lands Clauses Acts, 1845, 1860, and 1869.

Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
57. *County Courts (Costs and Salaries)* [E.]
Repeals part of section 21 of 9 & 10 Vict. c. 95.
Repeals part of section 2 of 29 & 30 Vict. c. 14., } County Courts Acts, 1846, 1866, and 1867.
Amends section 5 of 30 & 31 Vict. c. 142., }
58. *Divided Parishes and Poor Law Amendment* [E.]
Repeals in part 20 Vict. c. 19., Poor Law Act, 1857.
Repeals in part 4 & 5 Will. 4. c. 76., Poor Law Act, 1834.
Repeals in part 5 & 6 Will. 4. c. 69., Union and Parish Property Act, 1835.
Repeals in part 5 & 6 Vict. c. 18., Parish Property, &c. Act, 1842.
Amends 39 & 40 Vict. c. 61., Divided Parishes, &c. Act, 1876.
Amends section 1 of 25 & 26 Vict. c. 43., Poor Law Act, 1862.
Applies 42 & 43 Vict. c. 54., Poor Law Act, 1879.
59. *Educational Endowments (Scotland)* [S.]
Applies 41 & 42 Vict. c. 48., Endowed Institutions (Scotland) Act, 1878.
Applies 31 & 32 Vict. c. 100., Court of Session Act, 1868.
60. *Labourers Cottages and Allotments (Ireland)* [L.]
Amends 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881.
Applies 14 & 15 Vict. c. 93., Petty Sessions (Ireland) Act, 1851.
61. *Bills of Exchange* [U.K.]
Codifies the law relating to Bills of Exchange, Cheques, and Promissory Notes.
Repeals the several Acts and portions of Acts described in the Second Schedule. [These Enactments will be found in their chronological order in Table B.]
Applies 34 & 35 Vict. c. 17., Bank Holidays Act, 1871.
62. *Public Works Loans* [U.K.]
Grants 3,000,000*l.* for Public Works, and 1,200,000*l.* for Public Works in Ireland, during period ending 30th June 1883.
Grants 400,000*l.* to Irish Land Commission under 44 & 45 Vict. c. 49.
Borrowing powers for purposes of 45 & 46 Vict. c. 47., Arrears of Rent (Ireland) Act, 1882: Applies 44 & 45 Vict. c. 71., Irish Church Act Amendment Act, 1881.
- Ch.
62. *Public Works Loans—cont.*
Amends 24 & 25 Vict. c. 45., General Pier and Harbour Act, 1861.
Repeals section 13 of 38 & 39 Vict. c. 89., Public Works Loans Act, 1875.
Repeals section 11 of 40 & 41 Vict. c. 27., Public Works Loans (Ireland) Act, 1877.
Amends section 23 of 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881.
Applies 38 & 39 Vict. c. 55., Public Health Act, 1875.
Applies 41 & 42 Vict. c. 52., Public Health (Ireland) Act, 1878.
Applies 25 & 26 Vict. c. 101., General Police and Improvement (Scotland) Act, 1862.
Postpones payment of debt due from Trustees of Pulteney Harbour at Wick.
63. *Constabulary (Ireland) Amendment* [I.]
Amends 37 & 38 Vict. c. 80., Constabulary (Ireland) Act, 1874.
64. *Expiring Laws Continuance* [U.K.]
Continues (as in Schedule) the following Acts, and Acts amending the same; viz.:—
5 & 6 Will. 4. c. 27., Linen, &c. Manufactures (Ireland).
3 & 4 Vict. c. 89., Poor Rates (Stock in Trade Exemption).
4 & 5 Vict. c. 35., Copyhold, &c. Commissions.
4 & 5 Vict. c. 58., Application of Highway Rates to Turnpike Roads.
10 & 11 Vict. c. 32., Landed Property Improvement (Ireland).
10 & 11 Vict. c. 96., Ecclesiastical Jurisdiction.
11 & 12 Vict. c. 32., County Cess (Ireland).
14 & 15 Vict. c. 104., Episcopal, &c. Estates.
17 & 18 Vict. c. 102., Corrupt Practices Prevention.
23 & 24 Vict. c. 19., Dwellings for Labouring Classes (Ireland).
24 & 25 Vict. c. 109., Salmon Fishery (England).
26 & 27 Vict. c. 105., Promissory Notes.
27 & 28 Vict. c. 20., Promissory Notes, &c. (Ireland).
28 & 29 Vict. c. 46., Militia Ballots Suspension.
28 & 29 Vict. c. 83., Locomotives on Roads.
29 & 30 Vict. c. 52., Prosecution Expenses.
31 & 32 Vict. c. 125., Election Petitions and Corrupt Practices.
32 & 33 Vict. c. 21., Election Commissioners Expenses.
33 & 34 Vict. c. 56., Endowed Schools (Schemes).
34 & 35 Vict. c. 87., Sunday Observance Prohibitions.
35 & 36 Vict. c. 33., Parliamentary and Municipal Elections (Ballot).
36 & 37 Vict. c. 43., Regulation of Railways.
38 & 39 Vict. c. 43., Police Expenses.
38 & 39 Vict. c. 84., Returning Officers Expenses.
39 & 40 Vict. c. 21., Juries (Ireland).
41 & 42 Vict. c. 41., Returning Officers Expenses (Scotland).
41 & 42 Vict. c. 72., Sale of Liquors on Sunday (Ireland).
43 Vict. c. 18., Parliamentary Elections.

Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—*continued*.

- Ch.
65. *Prison Charities* [E.]
Applies 16 & 17 Vict. c. 137., &c.
Charitable Trusts Acts, 1853 to 1869.
66. *Passenger Vessels Licences Amendment (Scotland)* [S.]
Amends 9 Geo. 4. c. 47., section 10 of 4 & 5 Will. 4. c. 75., and section 45 of 43 & 44 Vict. c. 20. (Inland Revenue Act, 1880), as to sale of intoxicating liquors on Sundays on board Passenger Vessels in Scotland.
67. *South Wales Turnpike Roads Amendment* [W.]
Repeals (in part) 7 & 8 Vict. c. 91., South Wales Turnpike Trusts Act, 1844.
Applies 23 & 24 Vict. c. 51.,
Applies 40 & 41 Vict. c. 66., } Local Taxation Returns Acts, 1860 and 1877.
68. *Corrupt Practices (Suspension of Elections)* [E.]
Suspends Elections for Boston, Canterbury, Chester, Gloucester, Macclesfield, Oxford, and Sandwich.
69. *Intermediate Education (Ireland)* [I.]
Amends 41 & 42 Vict. c. 66., Intermediate Education (Ireland) Act, 1878.
70. *Supreme Court of Judicature (Ireland)* [I.]
Amends 40 & 41 Vict. c. 57., Supreme Court of Judicature Act (Ireland), 1877.
71. *Appropriation* [U.K.]
72. *Revenue, Friendly Societies, and National Debt* [U.K.]
Customs and Excise:—
Applies 39 & 40 Vict. c. 36., Customs Consolidation Act, 1876.
Amends 23 & 24 Vict. c. 129., Spirit Duties Act, 1860.
Amends 44 & 45 Vict. c. 12., Customs, &c. Act, 1881.
Amends 43 & 44 Vict. c. 24., Spirits Act, 1880.
Amends 33 & 34 Vict. c. 57., Gun Licence Act, 1870.
Amends 43 & 44 Vict. c. 19., Taxes Management Act, 1880.
Stamps:—
Amends 33 & 34 Vict. c. 97., Stamp Act, 1870.
- Ch.
72. *Revenue, Friendly Societies, and National Debt—cont.*
Exempts certain drafts and receipts for public purposes from stamp duty.
Exempts certain agreements under 44 & 45 Vict. c. 49., Land Law (Ireland) Act, 1881.
Exempts returns by Banking Companies under 25 & 26 Vict. c. 89., &c. (Companies Acts).
Amends 42 & 43 Vict. c. 11., Bankers Books Evidence Act, 1879.
Grants compensation for loss of fees under 44 & 45 Vict. c. 12., Customs, &c. Act, 1881.
As to adhesive stamps for stamp duties and postage duties.
Interprets section 25 of 33 & 34 Vict. c. 97., as to letters and postal packets.
As to stamp duties on patents and registrations of designs under 16 & 17 Vict. c. 58.
As to composition for stamp duty on Canadian Loans: 37 & 38 Vict. c. 26.
National Debt and Miscellaneous:—
Adjustment of account as regards accumulations of fractions of a penny.
Quarterly payment of dividends on 2½ per cents: 33 & 34 Vict. c. 71.
Termination of fortification loans under Acts mentioned in Fourth Schedule.
Provisions as to investment of moneys under Friendly Societies Acts, &c.
Provisions as to payment of commutations under 41 & 42 Vict. c. 63., Prison (Officers Superannuation) Act, 1878.
Amends 36 & 37 Vict. c. 57., Consolidated Fund (Permanent Charges Redemption) Act, 1873, as regards payments to Ecclesiastical Corporations.
Removes doubts as to Crown rights within Duchy of Lancaster: 18 & 19 Vict. c. 58.
Amends 21 & 22 Vict. c. 72. (Sale and Transfer of Land in Ireland) and 40 & 41 Vict. c. 57. (Supreme Court of Judicature, Ireland, Act, 1877) as to fees in proceedings under Land Judges.
73. *Ancient Monuments Protection* [U.K.]
Applies 42 & 43 Vict. c. 49., Summary Jurisdiction Act, 1879.

Table A.—Acts of 45 & 46 Vict. (in order of Chapter), &c.—*continued*.

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| <p>Ch.
73. <i>Ancient Monuments Protection</i>—cont.
 Applies 27 & 28 }
 Vict. c. 53., } Summary Jurisdiction
 Applies 44 & 45 } (Scotland) Acts,
 Vict. c. 33., } 1864 and 1881.
 Applies 14 & 15 Vict. c. 93., Petty
 Sessions (Ireland) Act, 1851.
 Applies 8 & 9 Vict. cc. 18., 19., Lands
 Clauses Acts, 1845.</p> <p>74. <i>Post Office (Parcels)</i> [U.K.]
 Applies 22 & 23 Vict. c. 59., Railway
 Companies Arbitration Act, 1859.
 Applies Post Office Acts, 7 Will. 4 &
 1 Vict. c. 36., &c.
 Applies 13 & 14 Vict. c. xxxiii., Railway
 Clearing Act, 1850.</p> <p>5. <i>Married Women's Property</i> [E. & I.]
 Repeals 33 & 34 }
 Vict. c. 93., } Married Women's
 Repeals 37 & 38 } Property Acts, 1870
 Vict. c. 50., } and 1874.
 Applies 13 & 14 Vict. c. 60., Trustee Act,
 1850.
 Applies 31 & 32 Vict. c. 122., Poor Law
 Amendment Act, 1868.</p> <p>76. <i>Merchant Shipping (Colonial Inquiries)</i>
 [U.K.]
 Amends 17 & 18 Vict. c. 104., &c., Mer-
 chant Shipping Acts, 1854 to 1880.
 Repeals part of section 242 of 17 & 18
 Vict. c. 104.
 Applies 25 & 26 Vict. c. 63., Merchant
 Shipping Act Amendment Act, 1862.
 Applies 32 & 33 Vict. c. 11., Merchant
 Shipping Colonial Act, 1869.
 Applies 39 & 40 Vict. c. 80., Merchant
 Shipping Act, 1876.</p> <p>77. <i>Citation Amendment (Scotland)</i> [S.]
 Amends 34 & 35 Vict. c. 42., Citation
 Amendment (Scotland) Act, 1871.</p> | <p>Ch.
78. <i>Fishery Board (Scotland)</i> [S.]
 Defines the "Herring Fishery Acts,"
 as set out in First Schedule.
 Defines the "Salmon Fishery Acts,"
 as set out in Second Schedule.
 Applies 31 & 32 Vict. }
 c. 45., } Sea Fishery
 Applies 38 & 39 Vict. } Acts, 1868
 c. 15., } and 1875.
 Exempts River Tweed as defined by
 22 & 23 Vict. c. lxx., Tweed Fisheries
 Amendment Act, 1859.</p> <p>79. <i>India (Home Charges Arrears)</i> [U.K.]
 Provides for arrangement of Accounts
 between Commissioners of the Treas-
 ury and Secretary of State in Council
 of India.</p> <p>80. <i>Allotments Extension</i> [E.]
 Amends 2 & 3 Will. 4. c. 42., Poor Relief
 Act, 1832.
 Amends 36 & 37 Vict. c. 19., Poor
 Allotments Management Act, 1873.
 Applies 8 & 9 Vict. c. 118., Inclosure
 Act, 1845.</p> <p>81. <i>Somersham Rectory</i> [E.]
 Recites Letters Patent of King James
 the First, and Act of 10th year of
 Queen Anne.
 Disannexes Rectory from Regius Pro-
 fessorship of Divinity, and vests same
 in University of Cambridge.</p> <p>82. <i>Lunacy Regulation Amendment</i> [E.]
 Amends 16 & 17 Vict. } Lunacy Regu-
 c. 70., } lation Acts,
 Amends 25 & 26 Vict. } 1853 and
 c. 86., } 1862.</p> |
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(B.)

Acts of former Sessions (in Chronological Order) Repealed and Amended by Acts of 45 & 46 Vict.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 45 & 46 Vict.
9 Will. 3. c. 17. -	Promissory Notes and Bills of Exchange.	Repealed -	61
3 & 4 Anne, c. 8. -			
17 Geo. 3. c. 30. -	Militia (Tower Hamlets) -	Repealed -	49
37 Geo. 3. c. 25. in part -	Better Observance of Good Friday -	Repealed -	61
39 & 40 Geo. 3. c. 42. -	Act of Union with Ireland -	Amended -	26
42 Geo. 3. c. 72. in part -	Raising a body of Miners for defence of Great Britain.	Repealed -	49
„ c. 90. in part -	Militia (England) -	Repealed -	49
„ c. 91. in part -	Militia (Scotland) -	Repealed -	49
43 Geo. 3. c. 50. in part -	Militia (Great Britain) -	Repealed -	49
„ c. 129. s. 5. -	Coffee Duties -	Repealed -	41
48 Geo. 3. c. 88. -	Promissory Notes and Bills of Exchange.	Repealed -	61
49 Geo. 3. c. 120. in part -	Militia (Ireland) -	Repealed -	49
51 Geo. 3. c. 114. -	Regiment of Miners of Cornwall and Devon.	Repealed -	49
„ c. 118. -	British and Irish Militias -	Repealed -	49
52 Geo. 3. c. 29. -	Militia (Ireland) -	Repealed -	49
53 Geo. 3. c. 48. ss. 3-5. -			
„ c. 132. -	Militia (Tower Hamlets) -	Repealed -	49
55 Geo. 3. c. 65. (except s. 8.) -	Militia (Great Britain) -	Repealed -	49
1 Geo. 4. c. 100. in part -	Militia (City of London) -	Repealed -	49
1 & 2 Geo. 4. c. 78. -	Bills of Exchange -	Repealed -	61
4 Geo. 4. c. 52. -	Felo de se Act, 1823 -	Repealed -	19
7 Geo. 4. c. 64. s. 27. -	Administration of Criminal Justice -	Repealed -	55
7 & 8 Geo. 4. c. 15. -	Bills of Exchange and Promissory Notes.	Repealed -	61
9 Geo. 4. c. 24. in part -	Bills of Exchange and Promissory Notes (Ireland).	Repealed -	61
„ c. 47. -	Sale of Liquors on Passenger Vessels.	Amended -	66
2 & 3 Will. 4. c. 42. -	Poor Relief Act, 1832 -	Amended -	80
„ c. 98. -	Bills of Exchange -	Repealed -	61
3 & 4 Will. 4. c. 15. -	Copyright -	Amended -	40
„ c. 74. in part -	Fines and Recoveries -	Repealed -	39
4 & 5 Will. 4. c. 36. s. 22. in part.	Central Criminal Court -	Repealed -	55
„ c. 75. s. 10. -	Sale of Liquors on Passenger Vessels.	Amended -	66
„ c. 76. in part -	Poor Law Act, 1834 -	Repealed -	58
„ c. 92. in part -	Fines and Recoveries (Ireland) -	Repealed -	39
5 & 6 Will. 4. c. 50. s. 30. -	Highway Act, 1835 -	Repealed -	27
„ c. 69. in part -	Parish Property Act, 1835 -	Repealed -	58
6 & 7 Will. 4. c. 58 -	Bills of Exchange -	Repealed -	61
„ c. 71. s. 56. -	Commutation of Tithes -	Repealed -	37
5 & 6 Vict. c. 14. -	Corn Importation Act, 1842 -	Repealed -	37
„ c. 18. in part -	Parish Property Act, 1842 -	Repealed -	58
7 & 8 Vict. c. 2. s. 1. in part -	Offences at Sea -	Repealed -	55

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 45 & 46 Vict.
7 & 8 Vict. c. 91. in part	Turnpike Trusts (South Wales)	Repealed	67
8 & 9 Vict. c. 18.	Lands Clauses Consolidation Act, 1845.	Amended	15
„ c. 37. s. 24.	Issue of Bank Notes in Ireland	Repealed	61
9 & 10 Vict. c. 74. ss. 24., 27.	Public Baths and Wash Houses	Amended	30
„ c. 95. s. 91. in part.	County Courts	Repealed	57
14 & 15 Vict. c. 57. ss. 127-130.	Civil Bills, &c. (Ireland)	Repealed	29
„ c. 93.	Petty Sessions (Ireland)	Amended	24
15 & 16 Vict. c. 50. in part	Militia (England)	Repealed	49
„ c. 79.	Inclosure Act, 1852	Amended	15
16 & 17 Vict. c. 45. in part	Government Annuities	Repealed	51
„ c. 70.	Lunacy Regulation	Amended	82
17 & 18 Vict. c. 75.	Acknowledgment of Deeds by Married Women.	Repealed	39
„ c. 97.	Inclosure Act, 1854	Amended	15
„ c. 104.	Merchant Shipping Act, 1854	Amended	55 and 76
„ c. 105. in part	Militia	Repealed	12 and 49
18 & 19 Vict. c. 120.	Metropolis Management Act, 1855	Amended	14
„ c. 122.	Metropolitan Building Act, 1855	Amended	14
19 & 20 Vict. c. 60. in part	Mercantile Law (Scotland) Amendment Act, 1856.	Repealed	61
„ c. 97. ss. 6, 7.	Mercantile Law Amendment Act, 1856.	Repealed	61
20 Vict. c. 19. in part	Poor Law Act, 1857	Repealed	58
21 & 22 Vict. c. 72.	Sale and Transfer of Land (Ireland).	Amended	72
23 & 24 Vict. c. 94. in part	Militia	Repealed	49
„ c. 111. s. 19.	Stamp Duties	Repealed	61
„ c. 120. s. 19.	Militia Ballots	Repealed	49
„ c. 129.	Spirit Duties	Amended	72
„ c. 145. in part	Trustees, &c. Act, 1860	Repealed	38
24 & 25 Vict. c. 45.	Pier and Harbour Act, 1861	Amended	62
25 & 26 Vict. c. 43. s. 1.	Poor Law Act, 1862	Amended	58
„ c. 86.	Lunacy Regulation	Amended	82
27 & 28 Vict. c. 43. in part	Government Annuities	Repealed	51
„ c. 87.	Corn Returns Act, 1864	Repealed	37
„ c. 114. in part	Improvement of Land Act, 1864	Repealed	38
28 & 29 Vict. c. 46. s. 4. in part	Militia Ballots	Repealed	49
29 & 30 Vict. c. 14. s. 2. in part	County Courts	Repealed	57
30 & 31 Vict. c. 110.	Reserve Force Act, 1867	Repealed	48
„ c. 111.	Militia Reserve Act, 1867	Repealed	48
„ c. 142. s. 5.	County Courts	Amended	57
31 & 32 Vict. c. 37.	Documentary Evidence	Amended	9
„ c. 102. s. 3.	General Police, &c. (Scotland)	Repealed	6
32 & 33 Vict. c. 41.	Poor Rate Assessment and Collection.	Amended	20
„ c. 66.	Militia Pay, &c.	Repealed	49
„ c. 102.	Metropolitan Board of Works (Loans).	Amended	33
33 & 34 Vict. c. 57.	Gun Licence Act, 1870	Amended	72
„ c. 67. in part	Army Enlistment Act, 1870	Repealed	48 and 49
„ c. 93.	Married Women's Property	Repealed	75
„ c. 97.	Stamp Act, 1870	Amended	72

INDEX TO THE PUBLIC GENERAL ACTS,

Table B.—Acts of former Sessions repealed and amended—*continued.*

Act repealed or amended.	Subject-matter.	How affected.	Chapter of 45 & 46 Vict.
34 & 35 Vict. c. 36. -	Pensions Commutation - - -	Amended -	44
„ c. 42. -	Citation (Scotland) - - -	Amended -	77
„ c. 74. -	Bills of Exchange and Promissory Notes.	Repealed -	61
„ c. 86. in part -	Regulation of the Forces Act, 1871	Repealed -	48 and 49
„ c. 108. -	Pauper Inmates Discharge, &c. -	Amended -	36
35 & 36 Vict. c. 20. in part -	Customs Act, 1872 - - -	Repealed -	41
„ c. 77. -	Metalliferous Mines - - -	Amended -	3
36 & 37 Vict. c. 19. -	Poor Allotments - - -	Amended -	80
„ c. 50. -	Places of Worship Sites - - -	Amended -	21
„ c. 57. -	Consolidated Fund (Permanent Charges Redemption) Act, 1873.	Amended -	72
„ c. 68. s. 6. -	Militia Service - - -	Repealed -	48
„ c. 84. s. 1. -	Militia Pay - - -	Repealed -	49
37 & 38 Vict. c. 29. -	Militia Law Amendment Act, 1874	Repealed -	49
„ c. 50. -	Married Women's Property - -	Repealed -	75
„ c. 80. -	Irish Constabulary - - -	Amended -	63
„ c. 86. s. 5. in part.	Irish Reproductive Loan Fund Act, 1874.	Repealed -	16
38 & 39 Vict. c. 36. -	Artizans Dwellings - - -	Amended -	54
„ c. 55. s. 314. -	Public Health - - -	Amended -	23
„ c. 60. in part -	Friendly Societies - - -	Repealed -	35
„ c. 65. -	Metropolitan Board of Works (Money).	Amended -	33
„ c. 69. -	Militia (Voluntary Enlistment) Act, 1875.	Repealed -	49
„ c. 89. s. 13. -	Public Works Loans Act, 1875 -	Repealed -	62
39 & 40 Vict. c. 35. in part -	Customs: Coffee Duties - - -	Repealed -	41
„ c. 43. -	Isle of Man (Officers) - - -	Amended -	46
„ c. 61. -	Divided Parishes, &c. Act, 1876 -	Amended -	58
„ c. 80. in part -	Merchant Shipping Act, 1876 -	Repealed -	55
„ c. 81. -	Crossed Cheques Act, 1876 -	Repealed -	61
40 & 41 Vict. c. 18. in part -	Settled Estates Act, 1877 - -	Repealed -	38
„ c. 27. s. 11. -	Public Works Loans (Ireland) Act, 1877.	Repealed -	62
„ c. 44. -	Superannuation (Mercantile Marine)	Repealed -	55
„ c. 56. s. 55. -	County Officers and Courts (Ireland)	Repealed -	29
„ c. 57. -	Supreme Court of Judicature (Ire- land).	Amended -	70 and 72
41 & 42 Vict. c. 10. in part -	Mutiny Act, 1878 - - -	Repealed -	48 and 49
„ c. 13. -	Bills of Exchange Act, 1878 -	Repealed -	61
„ c. 23. -	Acknowledgment of Deeds by Married Women (Ireland).	Repealed -	39
„ c. 31. -	Bills of Sale - - -	Amended -	43
„ c. 66. -	Intermediate Education (Ireland)	Amended -	69
42 & 43 Vict. c. 11. -	Bankers Books Evidence Act, 1879	Amended -	72
„ c. 15. -	Public Health (Scotland) Act, 1867, Amendment Act, 1879.	Repealed -	11
„ c. 32. s. 5. in part.	Army Discipline and Regulation (Commencement) Act, 1879.	Repealed -	48 and 49
„ c. 33. -	Army Discipline and Regulation Act, 1879.	Repealed -	48
„ c. 63. -	} Artizans Dwellings - - -	Amended -	54
„ c. 64. -			

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed or Amended.	Subject-matter.	How affected.	Chapter of 45 & 46 Vict.
43 Vict. c. 6. - - -	Beer Dealers Retail Licences -	Amended -	34
43 & 44 Vict. c. 19. - -	Taxes Management Act, 1880 -	Amended -	72
„ c. 20. s. 45. -	Sale of Liquors on Passenger Vessels.	Amended -	66
„ c. 24. - - -	Spirits Act, 1880 - - -	Amended -	72
44 & 45 Vict. c. 12. - -	Customs, &c. Act, 1881 - -	Amended -	72
„ c. 41. - - -	Conveyancing Act, 1881 - -	Amended -	39
„ c. 48. - - -	Metropolitan Board of Works (Money).	Amended -	33
„ c. 49. - - -	Land Law (Ireland) Act, 1881 -	Amended -	60 and 62
„ c. 57. in part -	Regulation of the Forces Act, 1881	Repealed -	48 and 49
„ c. 58. - - -	Army Act, 1881 - - -	Amended -	7 and 48

Table B.—Acts of former Sessions repealed and amended—*continued*.*Repeals effected by the Municipal Corporations Act, 1882,
45 & 46 Vict. c. 50.*

Act repealed by 45 & 46 Vict. c. 50.	Subject-matter of Act repealed.
<i>I.—Enactments repealed generally.</i>	
5 & 6 Will. 4. c. 76. -	Municipal Corporations Act, 1835.
6 & 7 Will. 4. c. 77. s. 26.	Ecclesiastical Duties and Revenues.
„ c. 103. (except s. 6.)	Municipal Corporation (Boundaries) Act, 1836.
„ c. 104. -	Municipal Corporation (Borough Fund) Act, 1836.
„ c. 105. -	Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. 4. & 1 Vict. c. 78.	Municipal Corporation (General) Act, 1837.
„ c. 81.	Municipal Corporation (Watch Rate) Act, 1837.
1 & 2 Vict. c. 31. -	Municipal Corporation (Benefices) Act, 1838.
„ c. 35. -	Stamp duty on admission to freedom.
2 & 3 Vict. c. 27. -	Municipal Corporation (Borough Courts) Act, 1839.
„ c. 28. -	Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict. c. 28. -	Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict. c. 48. -	Municipal Corporations (Poor Rates).
6 & 7 Vict. c. 89. -	Municipal Corporation Act, 1843.
8 & 9 Vict. c. 110. -	Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict. c. 93. -	Incorporation of certain boroughs.
12 & 13 Vict. c. 65. -	Levyng and collecting county rates, &c.
„ c. 82. s. 1. -	Boroughs contribution to county expenditure.
13 & 14 Vict. c. 42. -	Municipal Corporation (Incorporation) Act, 1850.
„ c. 64. -	Municipal Corporation (Bridges) Act, 1850.
„ c. 91. s. 9. -	Municipal Corporation (Justices) Act, 1850.
„ c. 101. s. 10. -	Poor Relief, &c.
15 & 16 Vict. c. 81. s. 38. -	County Rates.
16 & 17 Vict. c. 79. -	Municipal Corporation Act, 1853.
„ c. 137. s. 65. -	Charitable Trusts Act, 1853.
20 & 21 Vict. c. 50. -	Municipal Corporation Act, 1857.
21 & 22 Vict. c. 43. -	Municipal Franchise.
22 Vict. c. 35. -	Municipal Corporation Act, 1859.
22 & 23 Vict. c. 32. ss. 5, 6.	Police (Counties and Boroughs).
24 & 25 Vict. c. 75. -	Municipal Corporations Acts Amendment Act, 1861.
31 & 32 Vict. c. 41. -	Borough Electors Act, 1868.
32 & 33 Vict. c. 23. -	Municipal Corporation (Recorders) Act, 1869.
„ c. 55. -	Municipal Corporation (Election) Act, 1869.
„ c. 62. s. 21. -	Debtors Act, 1869.
34 & 35 Vict. c. 67. -	Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict. c. 33. ss. 20, 21.	Ballot Act, 1872.
„ c. 60. -	Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict. c. 33. -	Municipal Corporations Evidence Act, 1873.
37 & 38 Vict. c. 59. -	Working Men's Dwellings Act, 1874.
38 & 39 Vict. c. 40. -	Municipal Elections Act, 1875.
39 & 40 Vict. c. 61. s. 30. -	Divided Parishes and Poor Law Amendment Act, 1876.
40 & 41 Vict. c. 69. -	Municipal Corporations (New Charters) Act, 1877.
41 & 42 Vict. c. 26. ss. 20, 34, 41.	Parliamentary and Municipal Registration Act, 1878.

Table B.—Acts of former Sessions repealed and amended—*continued*.

Act repealed by 45 & 46 Vict. c. 50.	Subject-matter of Act repealed.
<i>II.—Enactments repealed only as to Boroughs within this Act.</i>	
3 Edw. 1. c. 6. in pt. -	Statutes of Westminster, the first: Amerciaments.
" c. 31. in pt. -	Statutes of Westminster, the first: Excessive toll in market town.
15 Rich. 2. c. 5. in pt. -	St. 7 Edw. I. de Religiosis.
2 & 3 Phil. & Mary c. 18.	Commissions of the peace and gaol delivery in towns, &c.
7 Jas. 1. c. 5. in pt. -	} Pleading against troublesome and contentious suits presented against justices of the peace, mayors, &c.
21 Jas. 1. c. 12. in pt. -	
11 Geo. 1. c. 4. -	Elections of mayors or other chief magistrates of boroughs or corporations, &c.
12 Geo. 3. c. 21. -	Relief in proceedings upon writs of mandamus for admission of freemen into corporations, &c.
32 Geo. 3. c. 58. -	Amendment of the law in proceedings upon information in nature of quo warranto.
55 Geo. 3. c. 51. -	Amending Act of George the Second, for more easy assessing, collecting, &c. of county rates.
57 Geo. 3. c. 91. -	Fees taken by clerks of the peace of counties, &c.
2 & 3 Will. 4. c. 69.	Preventing application of corporate property to purposes of election of members of Parliament.
3 & 4 Will. 4. c. 31. -	Elections of officers of corporations, &c.
4 & 5 Will. 4. c. 27.	Administration of justice in certain boroughs, &c.
7 Will. 4. & 1 Vict. c. 19.	Empowering person presiding at quarter sessions, &c. to divide their courts in certain cases.
5 & 6 Vict. c. 104. -	Municipal Corporation Act, 1842.
15 & 16 Vict. c. 5. -	Municipal Corporation Act, 1852.
23 & 24 Vict. c. 16. -	Municipal Corporation (Mortgages, &c.) Act, 1860.
" c. 51. in pt. -	Local Taxation Returns Act, 1860.
" c. 106. s. 6. -	Lands Clauses Consolidation Acts Amendment Act, 1860.
38 & 39 Vict. c. 89. s. 40. in pt. -	Public Works Loans Act, 1875.
39 & 40 Vict. c. 20. s. 3. -	Statute Law Revision (Substituted Enactments) Act, 1876.
40 & 41 Vict. c. 17. -	Division of courts of quarter sessions in boroughs.
" c. 66. in pt. -	Local Taxation Returns Act, 1877.
42 & 43 Vict. c. 30. s. 8. -	Sale of Food and Drugs Act Amendment Act, 1879.
43 Vict. c. 17. -	Town Councils and Local Boards Act, 1880.

THE
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In the Privy Council,

EDWARD BULLOCK, BARRISTER-AT-LAW.

In the Supreme Court of Judicature.

Court of Appeal,

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AND ROBERT BRUCE RUSSELL,
BARRISTERS-AT-LAW.

High Court of Justice.

Crown Cases Reserved,

WALTER HENRY MACNAMARA, BARRISTER-AT-LAW.

Chancery Division,

DAVID PITCAIRN, OECIL C. M. DALE, JOHN GENT, ARTHUR CORDERY,
HENRY CHARLES DEANE, JAMES E. HORNE, RICHARD BRAMWELL DAVIS,
WILLIAM HARMOOD COCHRAN, and GEORGE ABBOTT STREETEN,
BARRISTERS-AT-LAW.

Queen's Bench Division,

W. DECIMUS I. FOULKES, J. H. ETHERINGTON SMITH,
GILBERT GEORGE KENNEDY, RICHARD HOLMDEN AMPHLETT, FRANCIS PARKER,
and EDWARD BENNETT CALVERT, BARRISTERS-AT-LAW.

Probate, Divorce and Admiralty Division,

EDWARD STANLEY ROSCOE and EDMUND FULLER GRIFFIN, BARRISTERS-AT-LAW.

In the London Court of Bankruptcy

BEFORE THE CHIEF JUDGE,

WILLIAM HARMOOD COCHRAN and ARTHUR CORDERY, BARRISTERS-AT-LAW.

EDITED BY

MONTAGU CHAMBERS, ONE OF HER MAJESTY'S COUNSEL,
FREDERICK HOARE COLT and JOHN GEORGE WITT,
BARRISTERS-AT-LAW.

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